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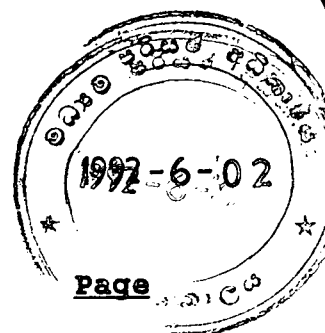
WORKSHOP ON
ENVIRONMENTAL LEGISLATION
JANUARY 14, 1992

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BACKGROUND TO THE WORKSHOP

The National Conservation Strategy which was presented to Parliament in 1988 recommended that,

"the legislation relating to the environment presently found scattered in a number of different statutes be reviewed.."

Reflecting this same necessity the National Environmental Act empowered the Central Environmental Authority to,

"report to the Minister upon matters concerning the protection and management of the environment and upon any amendment it thinks desirable in existing legislation concerning any portion of the environment and upon any matter referred to it by the Minister".

On 24th April 1991 the CEA held the first meeting of the Committee established to review the legislation in Sri Lanka relating to the environment. The Committee consists of members from the Attorney General's Department, Legal Draftsman's Department, the Environmental Council, Universities, the Ministry of Environment & Parliamentary Affairs and the CEA.

The Committee at its first meeting identified the areas which faced major environmental problems such as the aquatic environment, marine life, forest, wildlife, use of pesticides and fertilizer, human settlement, local administration, mining activities, energy & transport and land use.

These environmental problem areas were grouped into four broad subject areas and each subject was allocated among the members of the Committee. The Committee members were assigned the task of identifying and examining the statutes relevant to the above subject areas.

As a precursor to the preparation of the preliminary reports of the Members, it was decided to obtain the advice and guidance of experts in the subject areas under review. To this end the CEA formally contacted the experts, who were identified by the Members themselves, to help in their work.

Concurrently the Committee decided to obtain the views and observations of the general public and this was facilitated by two advertisements which appeared in the Ceylon Daily News of 15th July 1991 and in the 25th August issues of the Observer, Silumina and Virakesari respectively. As the subject of environment cuts across various fields it became a pre-requisite for the Committee members, the experts, senior government officials, non-government representatives and members of the public to be given an opportunity to interact in order to discuss the preliminary observations made by the Committee members and also to guide the members on issues which may need further clarification and elaboration.

The views and observations obtained at the Workshop will be utilized in the preparation of the report of the Committee which will include recommendations for consideration when enacting new legislation or amending existing statutes relating to environment.

This publication also contains the preliminary reports prepared by the Committee members and the names of the experts/resource persons who assisted them.

The participants of this Workshop were drawn from policy making institutions, implementing agencies, research organizations, universities, NGOO and the public. The CEA wishes to thank all those who contributed and participated at this workshop.

MEMBERS OF THE COMMITTEE

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AQUATIC RESOURCES

FISH & MARINE LIFE

PRELIMINARY OBSERVATIONS

Fisheries Ordinance, Pearl Fisheries Ordinance, Whaling Ordinance and Chank Fisheries Ordinance.

An examination of the Fisheries Ordinance No. 24 of 1940, Pearl Fisheries Ordinance No. 2 of 1925, Whaling Ordinance No. 2 of 1936 and Chank Fisheries Ordinance No. 8 of 1953 and their amendments reveal certain deficiencies pertaining to their adequacy to meet the present day needs of resources management. It appears that there is a need to prescribe certain fishing operations for which controls such as obtaining of licences should be made compulsory. Although the Pearl Fisheries Ordinance contain provisions for the regulation of operations in these particular areas, there appears to be the need to prescribe fishing operations other than those covered by this Ordinance in present day needs. An examination of the said Ordinance including the Fisheries Ordinance also reveal that there are no aprovisions in them geared to achieve sufficient conservation of fish and other aquatic animals and organisms. It appears that conservation of certain varieties of fish and other aquatic animals and organisms are necessary for the present day needs of resource management as un-controlled tapping of these resources would tend to cause depletion and even extinction. In this regard a mechanism whereby the authorities could declare areas of Sri Lanka waters or any land adjacent thereto or both such waters and land to be fisheries reserves is under consideration. Such a declaration could be made ,

- a) to afford special protection to the aquatic flora, fauna or other resources in danger of extinction in such waters or land and to protect and preserve the natural breeding grounds and habitats of fish, with particular regard to coral growth, aquatic ecosystems and flora and fauna or such other resources in danger of extinction;
- b) to promote regeneration of aquatic life in areas where such life has been depleted;
- c) to promote scientific study and research in respect of such area; or
- d) to preserve and enhance the natural beauty of such areas.

Legislation could be enacted and/or regulations made to control fisheries activity in areas declared as fisheries reserves.

Another important development that is under consideration with regard to resource management is declaration of fisheries management areas and place such areas under the control of local fisheries managemetn authorities. These authorities in turn could

make recommendations to the officials responsible for the implementation of the provisions with regard to the conduct of fishing operations and the use of different types of fishing gear and equipment, declaration of closed and opened seasons for the taking of specified species of fish in that fisheries management area. By this mechanism, expert and first hand knowledge pertaining to the taking of fish in general or particular species of fish in any particular area and use of particular fishing gear could be obtained for the purpose of resource management. It appears that the said Ordinances in their present form does not contain provision for such an exercise.

Resources management in the field of fisheries appear to include the management of other aquatic plants and animals. The application of the said Ordinances are limited to fish, crustacea, molusca, chanks, pearl oysters, whales and other aquatic animals which derive its substance wholly or mainly in water. Aquatic resources certainly include other plant and animal organisms that does not come under the above categories and hence there appears to be the need to make provision to achieve resource management in the field of aquatic resources. It is observed that the said ordinances do not have provisions geared to achieve resource management in all forms of aquatic life useful to mankind and the environment. The importance of this is also borne out by the fact that the Government has established a single Ministry to deal with subjects involving fisheries and Aquatic Resources.

An examination of the said ordinances also reveal an overall inadequacy of the penal provisions in dealing with the contravention of these laws. It appears that the penalties and punishments prescribed for the contraventions of the provisions of the said ordinances are those that were appropriate in 1953 and before. For example the Whaling Ordinance geared to preserve and protect an important species of aquatic mammals which was passed in 1936 provides that a person who kills a right whale, or an immature whale or a femals whale which is accompanied by a calf is liable on conviction after summary trial to imprisonment for a term not exceeding 3 months or for a fine not exceeding Rs.2000/- or to both such imprisonment and fine.

The punishment provided for in these Ordinances appear to be inadequate having regard to the present day needs, if the purpose of the laws are to achieve effective resource management. It appears that stringent punishment should be prescribed if the laws dealing with resource management and environmental quality standards are to be effective.

An Act to provide for the Management, Regulation, Conservation and Development of Fisheries and Aquatic Resources in Sri Lanka; to repeal the Fisheries Ordinance (Chapter 212), the Chank Fisheries Act (Chapter 213) the Pearl Fisheries Ordinance (Chapter 214) and the Whaling Ordinance (Chapter 215) and to provide for matters connected therewith or incidental thereto.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short
title

1. This Act may be cited as the Fisheries and Aquatic Resources Act, No. of 1991.

Part I

Administration

Administ-
ration

2. (1) The Secretary to the Ministry of the Minister in charge of the subject of Fisheries and Aquatic Resources (hereinafter referred to as the Secretary) shall be responsible for the administration of this Act and for the implementation and enforcement of its provisions.

(2) There shall be appointed such number of Directors and Deputy Directors of Fisheries and such other officers as may be necessary.

(3) The Secretary shall nominate a Director of Fisheries appointed to be the head of the Department of Fisheries and Aquatic Resources who shall hereinafter be referred to as the "Director"

(4) In the exercise of his powers and in the performance of his duties under this Act, the Secretary shall be subject to the general direction and control of the Minister.

(5) The Secretary may delegate any of the powers or duties conferred on him by or under this Act to any Director or Deputy Director of Fisheries either generally or specially and such Director or Deputy Director shall be empowered to exercise such power or perform such duty.

(6) Every person who holds office on the date of commencement of this Act as Directors or Deputy Directors of Fisheries or as other officers shall be deemed for all purposes to have been appointed under sub section (2).

(7) The Director of Fisheries who is the Head of the Department of Fisheries and Aquatic Resources as at the date of commencement of this Act shall be deemed for all purposes have been nominated under subsection (3).

**Licensing
Officers**

3 (1) There shall be one or more Licencing Officers appointed for each Administrative District for the purposes of this Act.

(2) The Secretary may in writing appoint any person by name or by office, to be or to act as a Licencing Officer (for the purposes of this Act).

**Establishment
of Fisheries
Advisory
Council**

4. (1) There shall be a Fisheries and Aquatic Resources Advisory Council (hereinafter referred to as the "Council"), which shall consist of-

(a) The Secretary to the Ministry of the Minister who shall be the Chairman;

(b) the Secretary to the State Minister of Fisheries and Aquatic Resources

(c) the Director in charge of the Department of Fisheries and Aquatic Resources

(d) the Director in charge of the National Institute of Fisheries Training

(e) the Director in charge of the subject of planning and programming be the Secretary;

(f) the Chairman of the Fishery Harbours Corporation;

(g) the Chairman of the Fisheries Corporation;

(h) the Chairman of the National Aquatic Resources Agency;

(i) six other members to be appointed by the Minister (hereinafter referred to as "appointed members") from among persons who shall have specialized knowledge and experience in matters relating to the fisheries industry or other scientific disciplines.

- (2) The Council may invite such other persons as it may think fit to attend its meetings as observers.
- (3) A person shall be disqualified from being appointed or continuing as an appointed member of the Council -
 - (a) if he is or becomes a member of Parliament; or
 - (b) if he is not, or ceases to be, a citizen of Sri Lanka.
- (4) Every appointed member of the Council shall, unless he vacates office earlier or is removed from office by the Minister under subsection (5), hold office for a period of three years and shall be eligible for re-appointment.
- (5) The Minister may remove from office any appointed member of the council without assigning any reason therefor.
- (6) In the event of the vacation of office of any appointed member, or his removal from office under the provision of the preceding subsection, the Minister shall appoint another person to hold such office for the unexpired period of the term of office of his predecessor.
- (7) If any appointed member is temporarily unable to discharge the duties of his office due to ill health or absence from Sri Lanka or for any other cause, the Minister shall appoint some other person to act in his place.
- (8) Subject to the provisions of this Act, the Council shall make rules regulating the procedure in regard to its meetings and the transaction of business at such meetings.
- (9) No act or proceeding of the Council shall be invalid by reason only of the existence of any vacancy in the Council, or any defect in the appointment of a member of the Council.

Functions
and
responsibilities of
the
Council.

5. Subject to the provisions of the Act, the functions and responsibilities of the Council shall be -

(a) to advise the Minister on all matters relating to the management, regulation, conservation and development of fisheries in Sri Lanka waters:

(b) to consider and advise the Minister on such other matters as the Minister may refer to the Council for advise: and

(c) to advise the Secretary on all such matters relating to the administration of this Act, as the Secretary may refer to the Council for advise.

Fisheries
management
and develop-
ment plan.

6. The Secretary shall cause to be prepared from time to time a plan for the management, regulation, conservation and development of fisheries in Sri Lanka.

PART II LICENCING OF FISHING OPERATIONS

Licensing of
fishing
operations

7.(1) No person shall engage in or cause any other person to engage in any prescribed operation except under the authority and otherwise than in accordance with the terms and conditions of a licence issued by the Director.

(2) There shall be appointed one or more Licensing Officers for each administrative district.

(3) The Director shall appoint any officer not below the rank of Fisheries Inspector to be a Licensing Officer.

Application
for a
licence.

8. (1) Every application for a licence under section 7 shall be made in the prescribed form to the Licensing Officer of the District in which the fishing operations are to be carried out and shall be accompanied by the prescribed fee.

(2) On receipt of an application under subsection (7), the Licensing Officer shall either grant a licence or for reasons to be recorded by him refuse to grant a licence.

Form and
duration of
the licence.

9. Every licence issued under this Part shall,-

(a) be in such forms as may be prescribed;

(b) unless it is cancelled earlier, be in force for the period for which the licence is granted.

(c) be subject to such terms and conditions with regard to the fishing operation for which the licence is granted.

Renewal of
licence.

10. A licence issued under this part shall be renewable after the expiration of the period specified in the licence on application made to the Licensing Officer not less than thirty days before expiry of the licence, if;

(a) the Licensing Officer is satisfied that the licensee has observed the terms and conditions of such licence

(b) the licensee has paid the prescribed fee for the renewal of the licence and

(c) the available information indicates that there is no threat to the sustainability of the aquatic resources due to the renewal of the licence.

Cancellation
of licence.

11. The Licensing Officer may cancel a licence issued under this Part, if he is satisfied that the licensee -

(a) has contravened any of the provisions of this Act or any regulations made thereunder or any terms and conditions of such licence; or

(b) has been convicted of an offence under this Act, or any other offence.

The Licensing
Officer shall
communicate
his decision
to applicant
or licensee to-
gether with his
reasons therefor.

12. (1) Where the Licensing Officer decides to refuse to grant or renew a licence or to cancel a licence, the Licensing Officer shall communicate to the applicant or the licensee, as the case may be, his decision with the reasons therefor, by registered post.

(2) Any decision required to be communicated under the preceding provisions of this section to any applicant or licensee shall be deemed to have been communicated to him after the expiry of a period of three days reckoned from the date of despatch of such communication by registered post to the usual place of business or residence of such applicant or licensee.

Appeals.

13. (1) The applicant or licensee, as the case may be, who is aggrieved by a decision of the Licensing Officer under section 12 -

(a) refusing to grant or renew a licence; or

(b) cancelling a licence,

may appeal against the decision of the Licensing Officer to the Director, in writing within fourteen days from the date on which the decision is communicated to him.

(2) The Director may

(a) allow the appeal and direct the Licensing Officer to grant or renew or revoke the cancellation of a licence; or

(b) disallow the appeal.

(3) The Licensing Officer shall comply with any direction issued to him under subsection (2) by the Director.

(4) Where an application for a licence or the renewal of licence is refused under any of the preceding provisions of this Act, the Licensing Officer shall refund to the applicant or the Licensee, as the case may be the fee accompanying such application.

Transfer of
Licences.

(5) The decision of the Director under this section shall be final and conclusive.

14. No licence issued under this Part shall be transferable except with the sanction of the Licensing Officer endorsed upon such licence.

PART III REGISTRATION OF LOCAL FISHING BOATS

Registration
of local
fishing boats.

15 (1) The Secretary shall cause to be maintained a register of local fishing boats.

(2) On or after such date as may be prescribed, every owner of a local fishing boat used for the purpose of taking fish in Sri Lanka waters shall apply to the Secretary for the registration of such boat and of the name of such owner.

(3) Every application for registration under subsection(2) shall be made in the prescribed form and shall be accompanied by the prescribed fee.

(4) On receipt of an application under subsection (2) the Secretary may if he considers it necessary require the applicant to furnish such other documents or information in order to determine whether the applicant is the owner of the fishing boat in respect of which the application for registration is made.

(5) The Secretary, shall, having considered such application and the documents and information, if any, furnished under subsection (4), register the local fishing boat in respect of which the application is made and the name of such owner.

(6) The person whose name appears in the register of local fishing boats shall, for the purposes of this Act, be deemed to be the owner of such boat.

Change of
ownership
or possession
to be reported
to the
Licensing
Officer.

16. (1) Every change of ownership of a registered local fishing boat shall be reported by the new owner or possessor of such boat within thirty days of such change to the Secretary who shall on payment of the prescribed fee register the name of the new owner of such boat in the Register of local fishing boats.

(2) The breaking up or loss of a registered local fishing boat shall be reported by the owner of such boat within thirty days of such breaking up or loss to the Secretary for the area in which the boat is licensed to operate.

(3) Where any change of ownership, or breaking up or loss of a local fishing boat is not reported within thirty days as required under the preceding provisions of this section, the new owner or owners, as the case may be, of such boat, shall be guilty of an offence under this Act.

Registration
of instruments
of mortgage

17. (1) Every instrument creating a mortgage of a local fishing boat (hereinafter referred to as an "instrument of mortgage") executed on or after such date as may be prescribed shall be presented to the Secretary for the area in which the boat is to be operated, for registration.

(2) Each instrument of mortgage shall, in the order in which it is presented, be registered by the Secretary in the register of local fishing boats.

Priority of
instruments
of mortgage.

18. Where there are more instruments of mortgage than one registered in respect of the same local fishing boat, such instrument shall be entitled to priority one over the other, according to the date on which such instrument is registered and not according to date of the execution.

Provided that fraud or collusion in securing the prior registration of any instrument of mortgage shall defeat the priority of the person claiming thereunder.

Registered
mortgage of
local fishing
boat to subsist
notwithstanding
sales, &c., to
third parties.

19. Notwithstanding any thing in any other law, where an instrument of mortgage of a local fishing boat is registered under section 17, any sale or other disposition of the local fishing boat by or against the mortgagor shall not, so long as the mortgage continues in force, extinguish or be deemed to extinguish the mortgage of the local fishing boat which shall remain subject to the mortgage in the hands of the transferee or other person in whose favour such disposition is effected.

Entry of
discharge
of mortgage

20. Where a registered mortgage of a local fishing boat is discharged, the Secretary on the production of the instrument of mortgage, with certificate of discharge of the mortgage endorsed thereon duly signed and attested and the receipt issued by the mortgage in respect of the amount received make an entry in the register of Local Fishing Boats to the effect that the mortgage has been discharged.

**Mortgage
not effected
by bankruptcy.**

21. A registered mortgage of a local fishing boat shall not be affected by any act of bankruptcy committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the local fishing boat in his possession, order or disposition or was the reputed owner thereof; and the mortgage shall be preferred to the right, claim or interest therein of the other creditors of the bankrupt, or any trustee or assignee on their behalf.

**Transfer
of mortgages
and
registration.**

22.(1) A registered mortgage of a local fishing boat may be transferred to any person and the instrument effecting the transfer(hereinafter referred to as the "instrument of transfer") shall be in the prescribed form. Every instrument of transfer executed on or after such date as may be prescribed shall be presented to the Secretary for registration.

(2) Every instrument of transfer of a mortgage shall be registered by the Secretary in the register of local fishing boats in which the mortgage is registered.

(3) The person to whom any such mortgage has been transferred shall enjoy the same priority as was enjoyed by the transferor provided the transfer is duly registered in the Register of Fishing Boats.

**Transmission
of interest
in mortgage
on
bankruptcy
& c.**

23. (1) Where the interest in a mortgagee of a local fishing boat is transmitted by bankruptcy, death or by any other lawful means, other than by a transfer under section 22, the person to whom the interest is transmitted shall -

(a) make a declaration to the Secretary stating his name address and the manner in which the interest in the mortgage has been transmitted: and

(b) produce to the satisfaction of the Secretary evidence of the transmission of the interest in the mortgage of the local fishing boat.

(2) The Secretary shall, on receipt of the declaration and on production of the evidence referred to in subsection(1), enter in the register of local fishing boats in which the mortgage is registered, the name and address of the person to whom the interest has been transmitted, as mortgagee of the local fishing boat.

(3) The person to whom the interest of a mortgagee is transmitted by bankruptcy, death or by any other lawful means, other than by a transfer under section 22, shall enjoy the same priority as was enjoyed by such mortgagee.

Searches
and copies.

24. All registers and documents kept under this Act may be searched and examined by any person claiming to be interested therein or by his attorney-at-law or agent duly authorized in writing, and certified copies or extracts from any such register, or document may be obtained from the Secretary on the payment of a prescribed fee.

Evidence.

25. A copy or extract purporting to be certified under the hand of the Secretary to be a true copy of or extract from any register or document kept pursuant to this Part shall be admissible in evidence without proof of the signature or appointment of the Secretary, and shall be prima facie evidence of the contents of such register or document for all purposes and in all proceedings, civil or criminal.

Other written
law not to
apply

26. The provisions of any written law, other than this Act, requiring the registration under that law of any instrument creating the mortgage of movable property shall not apply to an instrument of mortgage.

PART IV -PROTECTION OF FISHERIES AND OTHER AQUATIC RESOURCES

**Prohibition
against the
use or possession
of poisonous
or explosive
substances**

27. (1) No person shall -

(a) use or attempt to use any poisonous, explosive, or stupefying substance or other noxious material or substance for the purpose of poisoning, killing, stunning or disabling any fish or other aquatic resources ;

(b) carry or have in his possession or control any poisonous, explosive, or stupefying substance in circumstances indicating an intention of using such poisonous, explosive, or stupefying substance or other noxious material or substance for any purpose referred to in paragraph (a).

(2) No person shall land, sell, buy, receive or possess or transport any fish, knowing or having reasonable cause to believe that such fish has been taken by the use of any poisonous, explosive stupefying substance or other noxious material or substance.

**Prohibition
of fishing
for pearls
without a
licence**

28. (1) No person shall fish, or dive for, or collect, pearl oysters on, or from any pearl bank, or use a vessel for any such purpose, unless he holds a Pearl Fishery licence authorizing him to do.

(2) Regulations may be made providing for the procedure to be followed in the issue of a pearl fishery licence under this section.

**Prohibited
fishing gear
and fishing
methods**

29. No person shall use or possess, or have on board any local fishing boat, any fishing gear or engage in any prohibited fishing method in any area of Sri Lanka Waters.

Catching and possession of prohibited fish.

30. No person shall catch, land, transport, sell buy receive or have in his possession such species of prohibited fish as may be prescribed.

Prohibition or regulation export and import of fish.

31. (1) The Minister may, in consultation with the Minister in charge of the subject of Trade, by other published in the Gazette prohibit or regulate the export from or import into Sri Lanka, any species of fish including live fish or any eggs, roe or spawn or any products prepared from such fish or any such eggs, roe or spawn for such period of time as may be specified in the order.

(2) This section shall have effect as though it formed part of the Customs Ordinance, and the provisions of that Ordinance shall apply accordingly.

Fishery management areas.

32. (1) The Minister may by Order published in the Gazette -

(a) designate prescribed areas of Sri Lanka Waters or land adjacent thereto or both such waters and land as a local fisheries management area for the purposes of this Act ; and

(b) designate any existing fishermen's society, association, or other body representative of the fishermen operating in that local fisheries management area as the local fisheries management authority for that area, or where no such society, association or other body exists in that area establish such local Fisheries management authority.

(2) A local fisheries management authority designated or established by an order made under subsection (1), may make recommendations to the Minister on -

(a) the conduct of fishing operations and the use of different types of fishing gear ; and

- (b) the establishment of closed seasons for fishing or closed seasons for the taking of specified species of fish in that local fishing management area.

Minister to
declare
closed or
open season for
fishing.

33. (1) The Minister may by notice published in the Gazette declare a closed season or an open season -

- (a) for fishing in such area or areas as may be specified in the notice ; and
- (b) for the taking, in such area or areas of such species of fish as may be specified in the notice.

(2) Every notice referred to in subsection (1) shall be published in one or more registered national newspapers and shall be displayed in a conspicuous place or places in the area or areas in respect of which the closed or open season for fishing or the taking of specified species of fish has been declared.

(3) No person shall during the period of the closed season declared by the Minister under subsection (1) -

(a) fish in the area or areas specified in the notice ; or

(b) take, in the area or areas any species of fish specified in the notice .

Fishing for
research or
scientific
purposes.

34. (1) The Secretary may give written permission authorizing any local fishing boat to be used for research operations, experimental fishing or scientific investigations relating to fisheries resources, in Sri-Lanka Waters.

(2) The Secretary may, in giving his written permission under subsection (1), attach such conditions as he may think fit, regarding the conduct of such research operations, experimental fishing or scientific investigations.

(3) Nothing in section 7 shall apply in respect of any local fishing boat operating under the authority of, and in accordance with, the written permission of the Secretary given under subsection (1).

(4) Nothing in section 32 or 33 shall apply to any person operating any local fishing boat under operating under the authority of, the Secretary given under subsection (1), or to any person operating any foreign fishing boat under the authority of, and in accordance with, the written permission of the Secretary given under subsection (1) of section 12 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979.

PART V

CONSERVATION

Declaration of fisheries reserves.

35. The Minister may, in consultation with the Minister in-charge of the subject of conservation of wildlife, by order published in the Gazette declare any area of Sri Lanka Waters or any land adjacent thereto or both such waters and land to be a fisheries reserve, where he considers that special measures are necessary :

(a) to afford special protection to the aquatic flora, fauna or other resources in danger of extinction in such waters or land and to protect and preserve the natural breeding grounds and habitats of fish, with particular regard to coral growth, aquatic ecosystems and flora and fauna or such other resources in danger of extinction;

(b) to promote regeneration of aquatic life in areas where such life has been depleted;

(c) to promote scientific study and research in respect of such area; or

(d) to preserve and enhance the natural beauty of such area

**Acts prohibited
in fisheries
reserves.**

36. No person shall except upon a permit obtained from the Secretary or any person authorized by the Secretary in that behalf in the prescribed form on the payment of the prescribed fee,

(a) engage in any fishing operation in any fisheries reserve;

(b) mine, collect or otherwise gather or process coral, or any other form of plant or animal life, dredge, extract sand or gravel, discharge or deposit waste or any other polluting matter or in any other way disturb, interfere with or destroy fish or their natural breeding grounds or habitats in such reserve; or

(c) construct or erect any building or other structures on or over any land or waters within such reserve.

PART VI

AQUACULTURE

Leasing of
state lands.

37. Subject to the provisions of the State Lands Ordinance, there shall be leased, with the approval of the Minister, such portions of state lands or the Sri Lanka waters as the Minister may consider necessary in the interest of the national economy, for the purposes of aquaculture.

Licensing of
Aquaculture
operations

38. No person shall set up an aquaculture enterprise or continue to operate such enterprise already set up except under the authority of a licence issued by the Licensing Officer of the Administrative District.

Application
for a
Licence

39. (1) Every application for a licence under section 38 shall be made in the prescribed form to the Licensing Officer of the District in which the aquaculture operation are to be carried out and shall be accompanied by the prescribed fee.

(2) On receipt of an application under sub section (1) the Licensing Officer shall either grant a licence or for reasons to be recorded by him refuse to grant a licence.

Form and
duration of
the licence

40. Every licence issued under this part shall;

(a) be in such form as may be prescribed.

(b) Unless it is cancelled earlier be in force for the period for which the licence is granted and

(c) be subject to such terms conditions with regard to the aquaculture operations for which the licence is granted.

**Renewal
of licence**

41. A licence issued under this part shall be renewable after the expiration of the period specified in the licence or application made to the Licensing Officer not less than thirty days before the expiry of the licence if

(a) the Licensing Officer is satisfied that the licensee has observed the terms and conditions of such licence; and

(b) the licensee has paid the prescribed fee for the renewal of the licence.

**Cancellation
of licence**

42. The Licensing Officer may cancel a licence issued under this part if he is satisfied that the licence

(a) has contravened any of the provisions of this Act or any regulations made there under or any terms and conditions of such licence, or

(b) has been convicted of an offence under this Act.

PART VII SETTLEMENT OF FISHING DISPUTES

**Settlement
of fishing
disputes**

43. (1) When any fishing dispute arises or is apprehended, such disputes shall be referred to an Authorised officer

(2) When a fishing dispute is referred to an Authorised Officer in terms of sub section (1) of this section or when such a dispute comes to his notice he shall summon the parties to the dispute and endeavour to settle the dispute by conciliation.

(3) If the Authorised Officer succeeds in settling a fishing dispute, a memorandum setting out the terms of settlement shall be drawn up by him and shall be signed by both the parties to the dispute or by the representatives of each party thereto. The said terms of settlement shall be binding on the parties to the dispute.

(4) If the Authorised Officer after endeavouring to effect a settlement to a fishing dispute, fails to effect such a settlement, he shall proceed to hear the parties to the dispute and their witnesses and shall determine such dispute.

(5) Any person who is affected by a fishing dispute or by any matter relating to, connected with or arising from such dispute' which is the subject matter of inquiry before an Authorised Officer shall be entitled to be present at such inquiry and to make oral or documentary representations relating to such Dispute.

(6) It shall be the duty of the Authorised Officer to prepare a report containing the findings upon the matters inquired into and such recommendations as he may consider necessary in regard to those matters and the rights, restrictions or prohibitions which should be conferred or imposed with respect to the taking of fish in the waters relating to which the dispute arose or is apprehended or any other related matter and such findings shall be read out at the conclusion of the inquiry. The parties to the dispute and of other person who is affected by such determination shall be entitled to obtain a copy of such report on payment of a prescribed fee.

(7) The Authorised Officer shall conclude the proceedings taken under this section within a period of one month from the date on which such dispute is brought to his notice or the dispute comes to his notice. However, the Authorised Officer may extend the period within which such proceedings shall be concluded for a further period of one month for reasons to be recorded by him.

(8) The Minister may make regulations providing for the procedure to be followed at an inquiry held under this section.

(9) Any person who is affected by any fishing dispute into which inquiry is held under this section or by any matter relating to, connected with or arising from that dispute may, before the expiration of a period of one month from the date of determination in relation to that dispute, make representations in writing to the Director of Fisheries with respect to any matter dealt with in the report.

(10) The Director, after considering the report prepared under subsection (6) in respect of any fishing dispute and any representations made to him under subsection (9) with reference to that report, may approve, alter or reverse the findings of the or make regulations regarding the subject-matter of that dispute or any matter relating thereto, or connected therewith or arising therefrom, including regulations for the purpose of -

- (a) prohibiting, restricting or regulating the taking of fish in any specified part of Sri Lanka Waters by persons not belonging to any specified group of section of persons using specified fishing boats, fishing gear and fishing methods ; or
- (b) fixing different days or times during which different groups or sections of persons engaged in fishing may take fish in any specified part of Sri Lanka waters ; or
- (c) cancelling the registration of any fishing net and of the owner thereof and registering, in place of such fishing net and owner of any other fishing net and the owner thereof.

(11) Any person who is dissatisfied with the determination of the Director, under Section 10 above, may within fourteen days of such determination appeal to the Minister.

(12) The Minister, after considering the report preferred under subsection (6) and the determination of the Director and any representations made by the parties to the dispute in writing may approve, alter, or reverse the determination of the Director.

(13) Nothing in the preceding provisions of this section shall be deemed or construed to authorise the reference thereunder of any dispute in relation to the subject-matter of which any civil action or other civil proceeding is pending before any court of competent jurisdiction.

Interim
Orders
in
respect
of
fishing
disputes

44(1) Where the Minister apprehends that any fishing dispute which has been referred for inquiry and report under section 43 is likely to result in a breach of the peace, the Minister may, by Order published in the Gazette, make all such provisions in respect of the matters referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (10) of that section as he may deem necessary to prevent such breach of the peace.

(2) Any Order made by the Minister under subsection (1) in respect of any fishing dispute shall come into force on the date of its publication in the Gazette and shall cease to be in force on the date of the coming into force of the regulations made by the Minister under section 43(10) in respect of that dispute.

PART VIII-POWERS OF AUTHORIZED OFFICERS

Powers of
authorized
officers.

45(1) The Director shall appoint such number of officers not below the rank of Fisheries Inspector, as may be necessary to implement the provisions of this Act, who shall be known as "authorized officers".

(2) Any officer appointed by the Director as an authorized officer under sub-section (1) shall be deemed to be a peace officer within the meaning of the Code of Criminal Procedure Act. No. 15 of 1979.

(3) An Authorized Officer shall, for the purpose of ascertaining whether the provisions of this Act or any regulation made there under are being complied with, have the power -

(a) to stop, go on board, and search any fishing boat in Sri Lanka waters or any local fishing boat beyond the limits of Sri Lanka waters and examine such boat, the personnel of the crew thereof, the fishing gear and other equipment carried therein and any fish or other aquatic resources found on board such boat ;

(b) to stop and search any other vehicle transporting any fish or other aquatic resources ;
or

(c) to examine and take copies of any licence, permit, book, certificate or other document required to be obtained or maintained by or under this Act.

(4) Any authorized officer, where he has reasonable cause to believe that an offence under this Act has been committed , may, with or without a warrant-

(a) enter and search , at all reasonable hours of the day, any premises in which he has reason to believe such offence has been committed.

(b) enter and search at all reasonable hours of the day any premises in which fish or other Aquatic resources taken in contravention of the provisions of the Act or any regulations made thereunder are being stored or kept;

(c) take samples of any fish or other aquatic resources found in any premises searched under paragraph (a) of sub-section (3).

(d) arrest any person found in any such premises, who he has reason to believe has, committed such offence.

(e) seize any boat or other vehicle, engine, fishing net or other fishing gear, equipment, stores or cargo, which he has reason to believe has been used in or in connection with the commission of such offence.

(f) seize any fish or other aquatic resources which he has reason to believe have been taken in the commission of such offence, or has been landed, sold, bought, received, or possessed in contravention of this Act ; or

(g) seize any poisonous, explosive or stupefying substance or other noxious material or substance which he has reason to believe has been used or is possessed in contravention of this Act.

(5) Where a fishing boat or other thing is seized under subsection (4), the authorized officer by whom the boat or other thing was seized shall, as soon as possible, produce that boat or other thing before a Magistrate's Court of competent jurisdiction and the Court shall make such order as it may deem fit relating to the detention or custody of the boat or other thing, pending the conclusion of any proceedings instituted in respect of that boat or other thing,;

Provided that where any fish or other aquatic resources seized under subsection (4) are subject of speedy decay, an authorized officer may, sell such fish or other aquatic resources and shall deposit the proceeds of such sale in the Magistrate's Court.

(6) Every person arrested under subsection (4) shall be informed of the reason for his arrest and shall (subject, in the case of an arrest under a warrant, to any endorsement in such warrant) be produced before a court of competent jurisdiction within twenty four hours of such arrest, exclusive of the time necessary for the journey from the place of arrest to that Court.

Powers of seizure and removal of mortgaged fishing boats, engines and fishing gear on default.

46(1) Where default is made by any person in the payment of any sum due to the Government on any agreement entered into between the Government and such person in respect of a fishing boat, engine, equipment of fishing gear, the Secretary may, in writing, empower any authorized officer to seize and remove such fishing boat, engine or fishing gear.

(2) An authorized officer, may for the purpose of seizing any fishing boat, engine or fishing gear under subsection (1) enter and search any premises or place in which he has reason to believe such fishing boat, engine or fishing gear is kept.

(3) Nothing in this section shall be deemed to preclude the Government from recovering any sum due to the Government on any agreement referred to in subsection (1), in accordance with the provisions of any other law for the time being in force.

Authorized
officer not
in uniform
declare
office

47(1) An authorized officer when acting under the provisions of this Act, shall, declare his office and produce such identification or written authority as may be reasonably sufficient to show that he is an authorized officer for the Purpose of this Act.

(2) It shall not be an offence for any person to refuse to comply with a request, demand or order made by an authorized officer if such authorized officer fails and declare his office or produce such identification or written authority.

PART- IX OFFENCES AND PENALTIES

Offences

48 (1) Any person who contravenes the provisions of sections 15, 16, 17 or 22 of this Act or of any order made under section 31 shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding three thousand rupees.

(2) Any person who contravenes the provisions of Sections 7, 28, 29, 30, 36 or 38 of this Act shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not less than Rupees three thousand and not exceeding Rupees Seven thousand or imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(3) Any person who contravenes the provisions of section 27 of this Act shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate, be liable to a fine not exceeding eight thousand rupees or to imprisonment of either description for a term not less than six months and not exceeding two years or to both such fine and imprisonment or on a second or subsequent conviction to a fine not twelve thousand rupees or to imprisonment of either description for a term not less than one year or to both such fine and imprisonment.

(4) Any person who -

(a) fails or refuses to stop any fishing boat in Sri Lanka waters or beyond the limits of Sri Lanka Waters, or any other vehicle transporting fish or other aquatic resources, when called upon to do so by an authorized officer ;

(b) does not allow the search and examination of such boat, the crew thereof, the fishing gear and other equipment carried therein and any fish or other aquatic resources found on board such boat or of any vehicle transporting fish or other aquatic resources, by an authorized officer;

(c) refuses to be searched by, obstructs or resists, or escapes or attempts to escape from the custody of, an authorized officer;

acting under the provisions of section 42 shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees.

(5) Any person who contravenes any regulation made under this Act shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate be liable to a fine not exceeding two thousand rupees and imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment unless the regulations contravened prescribe any other punishment.

Offences by bodies of persons 49. Where an offence under this Act is committed by a body of persons, then-

(a) if that body is a body corporate, every person who at the time of the commission of the offence was the Director, Secretary or other similar officer of that body; or

(b) if that body is not a body corporate, every person who at the time of the commission of the offence was a member, or partner of that body,

shall be deemed to be guilty of that offence, unless proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

Power of the court to order forfeiture 50(1) Where any person is convicted of an offence under this Act-

(a) any fishing boat, vehicle, fishing gear or other equipment or thing used in, or in connection with, the commission of the offence; or

(b) any fish or other aquatic resources caught or taken in the commission of such offence or the proceeds of sale of any such fish or other aquatic resources deposited in Court under section 42, shall, by virtue of such conviction, be forfeited to the state.

(2) Any fishing boat, vehicle, fishing gear or other equipment or thing, or fish or other aquatic resources forfeited to the state by the operation of subsection (1) shall vest absolutely in the State. Such vesting shall take effect-

(a) after the expiration of the period within which an appeal may be preferred to the Court of Appeal or to a High Court established under Article 154B of the Constitution against the order of forfeiture; or

(b) where an appeal has been preferred to the Court of Appeal or to a High Court established under Article 154B of the Constitution against the order of forfeiture, upon the determination of such appeal, confirming or upholding the order of forfeiture.

(3) The Secretary or any person authorized by the Secretary shall take possession of any boat, vehicle, fishing gear, or other equipment or thing or fish or other aquatic resources vested in the State under subsection (2) and may sell or otherwise dispose of them as he may think fit.

Cancellation of licences and permits. 51. Where the holder of a licence to carry on a fishing operation or the holder of a pearl fishery licence or permit granted or issued under this Act is convicted by a Magistrate of any offence under this Act, the Magistrate may make order cancelling such licence or permit.

Compounding of offences. 52(1) Where any offence, not being an offence under section 27, has been committed in the contravention of any of the provisions of this Act, the Secretary may, in the case of a first offender having regard to the circumstances in which the offence was committed and with the approval of the less than one-fifth of the maximum fine imposable for such offence, and may, as part of the compounding of the offence, with the approval of the Minister, order the release of any boat, vehicle, fishing gear or other equipment or thing or fish or other equipment or thing or fish or other aquatic resources seized under section 42(3) in respect of which no order of detention has been made by a Magistrate under that section, on payment of a sum of money not exceeding the estimated value of such boat, vehicle, fishing gear or other equipment or thing or fish or other aquatic resources.

(2) The compounding of any offence under subsection (1)

(a) shall be notified in writing, under the signature of both parties to the Magistrate's court where a proceeding in connection with the Commission of the offence is pending and,

(b) shall have the effect of an acquittal.

Release of boat against bond or other security. 53 The provisions of section 21 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979 relating to the release of boats on the provision of a satisfactory bond or other form of security shall, mutatis mutandis, apply in respect of any local fishing boat, ordered to be detained under section 42(5), pending the conclusion of any prosecution instituted for an offence committed against the provisions of this Act.

Presumptions as to the taking of fish 54(1) For the purposes of this Act, it shall be presumed until the contrary is proved-

(a) that where any fish is found at any time in any fishing boat at any place in Sri Lanka or in Sri Lanka waters, such fish was taken-

(i) by the owner of that boat, if he is in the boat at that time or if no person is found in the boat at that time; or

(ii) by the person for the time being in the boat and in the charge thereof, if the owner is not in the boat at that time;

(b) that where any fishing boat which has not

been registered is at any time within Sri Lanka waters, any fish found in that boat at that time, was taken for profit;

(c) that any fish which is not taken for sport, scientific research or for any other prescribed purpose, is taken for profit.

(2) In any prosecution for a contravention of any of the provisions of section 27 in respect of any fish, it shall be presumed, until the contrary is proved, that such fish was taken in Sri Lanka waters.

Presump-
tion as
to use
of poison
etc.

55(1) Where any poisonous, explosive or stupefying substance or other noxious material or substance, which can be used for the purpose of poisoning, killing or stupefying fish, is found in the possession or control of any person in the neighbourhood of any Sri Lanka waters, shortly after such substance or material is proved to have been used in such waters, that person shall be presumed, until the contrary is proved, to have used such substance or material for the purpose aforesaid.

(2) Where any poisonous, explosive or stupefying substance or other noxious material or substance, which can be used for the purpose of poisoning, killing or stupefying fish, is found in the possession or control of any person in a fishing boat in Sri Lanka water, that person shall be presumed, until the contrary is proved, to have attempted to use such substance or material for the purpose aforesaid.

Presump-
tion as
to use
of
fishing
gear in
prohibit-
ed
waters.

56. Where any fishing net or fishing gear, the use of which in any specified part of Sri Lanka waters is prohibited by any regulation made under this Act, is found in the possession or under the control of any person within a distance of half a kilo metre from such waters, then, for the purposes of any prosecution for a contravention of that regulation that person shall be presumed, until the contrary is proved, to have used such net or fishing gear in such waters.

Jurisdic-
tion over
offences
committed
at sea.

57. Where any offence under this Act is committed by any person within the exclusive economic zone of Sri Lanka or outside Sri Lanka waters, the Magistrate's Court having jurisdiction-

(a) over that part of the coast nearest to the place at which the offence was committed; or

(b) over the place at which the person comes ashore after the commission of the offence

shall have jurisdiction to try the offence .

PART-X GENERAL

58 (1) There shall be a fund which shall be called the Fisheries Reward Fund (in this Act referred to as "the reward fund").

(2) The Secretary shall be responsible for the administration of the reward fund.

(3) There shall be credited to the reward fund-

(a) all fines paid under this Act and the proceeds of the sale or any fishing boat, vehicle, fishing gear or other equipment or thing or any fish or other aquatic resources forfeited to the State under this Act ; and

(b) twenty percent of all fines paid under Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979 and the proceeds of the sale of any boats, fishing gear, fish, aquatic plant, equipment, stores or cargo forfeited to the State under section 19 of that Act.

(4) The Secretary may, from time to time, pay out of the reward fund, a reward -

a) to any officer appointed under section 2;

b) to any authorized officer ; or

c) to any informer

of such sum of money as he may deem fit and necessary provided, however that such sum shall not, except with the prior approval of the Minister, exceed the sum fixed as the maximum limit of reward determined by regulation which are hereby authorized to be made for the purpose under this Act.

(5) The accounts of the Reward Fund shall be audited annually by the Auditor-General in accordance with Article 154 of the Constitution.

**Imposition
of cess
on the
import of
fish or
fish
products**

59 (1) There shall be charged, levied and recovered a cess on any fish or fish products imported to Sri Lanka in addition to any duty imposed under any other written law at such rate as may be determined from time to time by Parliament by resolution.

(2) The cess shall be collected by the Director General of Customs and credited to the Consolidated Fund.

(3) This section shall apply as though it formed part of the Customs Ordinance and the provisions of that Ordinance shall apply accordingly.

Regulations

60 (1) The Minister may make regulations for and in respect of all or any of the following matters :-

(a) all matters for which regulations are authorized or required or prescribed to be made under this Act ;

(b) the reservation of specified areas of Sri Lanka Waters for different types of fisheries or methods of fishing ;

(c) the construction of all types of fishing boats;

(d) The type of size and the manner of marking of the registered fishing boats;

(e) the periodical inspection of fishing boats and the issue of certificates of seaworthiness and the fees payable for such inspection ;

(f) the minimum standards of navigation to be observed and the safety equipment required to be kept by owners of local fishing boats operating in Sri Lanka waters;

(g) the minimum manning standards to be observed by owners of local fishing boats ;

(h) the registration of fishing nets or other specified fishing equipment used in Sri Lanka Waters and in any part of such waters and of the owners thereof, the officers by whom such nets or other specified fishing equipment shall be registered, the fees payable for such registration, and the marking of registered fishing equipment;

(i) the issue of export and import permits, the fees payable therefor, the conditions to be attached thereto, and the circumstances in which or the grounds upon which such permits may be refused ;

(j) the prohibited areas in Sri Lanka waters or any part of such waters, for the taking of any specified species of fish ;

(k) the prohibition or the restriction of the taking of fish during any specified period.

(l) the prohibition of the use of any specified equipment, device or substance for the purpose of, or in connection with the taking of fish and the regulation of the time and the manner of taking of fish ;

(m) the regulation of the exercise of the powers conferred by section 45 ;

(n) the taking and landing of fish and other aquatic resources and the control and management of landing areas ;

(o) the management and regulation of the taking and landing of chanks, Pearl Oysters and Whales ;

(p) the regulation of the handling and distribution of fish and other aquatic resources and the maintenance of quality of fish, fish products and other aquatic resources;

(q) the prohibition, regulation or control of the erection and use of fishing stakes, fish kralls, fishing gear, stake nets and other such appliances for the taking of fish ;

(r) the management, regulation and protection of fisheries reserves ;

(s) the licensing or establishments for the processing of fish, or other aquatic resources and the conditions to be attached to such licences ;

(t) the management and regulation of aquaculture ;

(u) the management of inland fisheries ;

(v) the collection of statistics and the provision of information by persons who are engaged in fishing, marketing or processing of fish or aquaculture operations ;

(w) the prohibition of restriction of the taking or sale of fish and other aquatic resources ;

(x) all matters incidental to or connected with the matters specifically referred to in this subsection.

(2) Every regulation made by the Minister under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of its disapproval but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is so deemed to be rescinded shall be published in the Gazette.

Limitation of action

61 (1) No action shall lie against any officer appointed under section 2 or any authorized officer nominated under section 45, for any damages in any Civil Court for any act done in good faith in pursuance or supposed pursuance of any provision of this Act.

(2) No prosecution against any officer appointed under section 2 or an authorized officer nominated under section 45, in respect of any act done by him in pursuance or supposed persuance of any provision of this Act, shall be entertained by any Court unless such action is instituted within six months of the date of the act complained of.

Repeals.

62. The Fisheries Ordinance (Chapter 212), the Chank Fisheries Act (Chapter 213), the Pearl Fisheries Ordinance (Chapter 214) and the Whaling Ordinance (Chapter 215) are hereby repealed.

Savings.

63. Notwithstanding the repeal of the Fisheries Ordinance -

(a) all regulations made under that Ordinance and in force on the date of commencement of this Act, in so far as they are not inconsistent with the provisions of this Act or any regulation made thereunder shall continue in force in like manner as if they were made under this Act, and may be amended, varied, or rescinded by regulations made under this Act ;

(b) all actions, prosecutions, proceedings or references of fishing disputes under that Ordinance, pending or incompleated on the date of commencement of this Act shall be deemed to continue and may be carried on and completed after the date of commencement of this Act ;

(c) all moneys lying to the credit of the Fisheries Reward Fund established under section 34 of that Ordinance shall, on the date of commencement of this Act stand transferred to the Fisheries Reward Fund established under section 55 of this Act ;

(d) every instrument of mortgage and every instrument of transfer registered under that Ordinance and subsisting on the date of commencement of this Act shall be valid and effectual as if they were registered under this Act ;

(e) all permits and licences issued under that Ordinance shall have effect as though such licence or permit were a licence or permit issued under this Act, and as though the terms and conditions of such licence or permit issued under this Act.

Sinhala text
to prevail
in case of
inconsistency

64. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpre-
tation

65. In this Act, unless the context otherwise requires -

"aquaculture" means the husbandry of aquatic plants and animals ranging from the propagation of aquatic organisms under human control, to the manipulation of at least one stage of an aquatic organism's life for purposes of increasing production ;

"acquaculture enterprise" means any area, enclosure, pond, impoundment, premises or structure set up or used for the cultivation of fish or aquatic plants, for commercial purposes and shall include any cultivated oyster or other shellfish bed, or raft;

"fish" means any aquatic organism, whether piscine or not, and includes any shellfish, crustacean, mollusc, holothurian or aquatic mammal and its young, fry, eggs or spawn and includes zooplankton;

"fishing operation" means catching, taking, killing, collecting or culturing fish by any method and includes an attempt to catch, take, kill, collect or culture fish;

"fishing boat" means any vessel which is for the time being employed for the purpose of taking fish and includes its propulsion unit and fishing gear ;

"fishing dispute" means any dispute, between two or more persons or groups of persons engaged in fishing in regard to the right to fish, or to the time, manner of location of fishing in any part of Sri Lanka waters and includes disputes regarding the use of water or land for aquaculture purposes;

"Foreign fishing boat" means any fishing boat other than a local fishing boat ;

"import" means to bring into Sri Lanka, by sea or by air, from any place outside or beyond the limits of Sri Lanka ;

"inland waters" means any public rivers, lakes, estuaries, lagoons, streams, tanks, pools, channels and any other public areas of fresh or brackish water in Sri Lanka ;

"local fishing boat" shall have the same meaning as contained in the Regulations of Foreign Fishing Boats Act no 59 of 1979. However registration under the Merchant Shipping Act will not be required for the purposes of this Act.

"Sri Lanka Waters" means -

(a) the area declared to be the territorial sea of Sri Lanka by proclamation made under section 2 of the Maritime Zones Law, No.22 of 1976 ;

(b) the area declared to be the contiguous zone of Sri Lanka by proclamation made under section 4 of the Maritime Zones Law, No. 22 of 1976;

(c) the area declared to be the exclusive economic zone of Sri Lanka by proclamation made under section 5 of the Maritime Zones Law, No. 22 of 1976;

or other structure used for other cultivation of oysters or other shell fish ;

"authorized officer" means any officer nominated by the Secretary under section 42 (1) and includes any officer of the Army, Air Force or Police not below the rank of Sergeant and any officer of the Navy not below the rank of Petty Officer ;

"exclusive economic zone" means the area declared to the exclusive economic zone of Sri Lanka by proclamation made under section 5 of the Maritime Zones Law, No. 22 of 1976;

"Minister" means the Minister in charge of the subject of Fisheries and Aquatic Resources ;

"other aquatic resources" means living aquatic resources and includes any seaweed, phytoplankton or other aquatic flora ;

"pearl bank" means such areas as may from time to time be prescribed by regulation and includes the bed of such pearl bank ;

"pearl oyster" means pearl-bearing oysters of all descriptions, and includes the mollusc commonly called the "window pane oyster" or "the Tampalakam pearl oyster". and scientifically known as *Placuna Placenta*, as well as any other pearl producing molluscs which may be introduced, or laid down, off the coasts of Sri Lanka, or in the bays or inland waters of Sri Lanka ;

"prescribed" means prescribed by regulations or rules made under this Act ;

"Sale" with its grammatical variations and cognate expressions, means any transfer of the possession of fish by one person to another in the ordinary course of trade or business for cash or deferred payment or for other valuable consideration ;

"export" means to take out of the limits of Sri Lanka to sea or to a foreign country ;

d) the area declared to be historic waters of Sri Lanka by proclamation made under section 9 of the maritime Zones Law, No. 22 of 1976 ; and

e) all public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, channels and all other public, inland or internal waters.

Application
of this
Act

62. The provisions of this Act shall be in addition to and not in substitution of the provisions of the Fauna and Flora Protection Ordinance and the Forest Ordinance or of any regulation or rule made under such Ordinances relating to the taking of fish or to the manner of taking fish in Sri Lanka waters.

LAWS RELATING TO FORESTS
AND PLANT PROTECTION

PRELIMINARY REPORT

This document has been prepared as a preliminary report only for the purpose of initiating a dialogue leading to a comprehensive review of the Forestry Laws of Sri Lanka. It is proposed that the contributions of the participants as well as selected experts be incorporated into the final report that will be prepared after this seminar.

**PRELIMINARY REPORT ON THE LAWS RELATING TO FORESTS
AND PLANT PROTECTION**

INTRODUCTION

- 1.1 Several laws which have a relevance to the subject area of forests and plant protection exist in the statute books in Sri Lanka today. Whilst some of the said statutes directly deal with forests and plant protection, there exist others which have a semblance of an impact on the said subject area. A common characteristic that emerges from these laws however, is that they are ad hoc in nature - having been introduced over the years to meet various situations and needs that have cropped up over the period, and that they are based on rationales which were relevant at the time, but which have gradually lost their significance and justifications over time.

- 1.2 It is in this background that this report has been prepared. Clearly, the existing laws require urgent review to bring them up to date to ensure that they can effectively provide demand. But this in turn, raises the fundamental question as to whether the existing laws should be discarded totally and fresh laws be introduced in their place, or else, whether it is sufficient for the moment to merely amend the existing laws to facilitate the implementation of new policies. Naturally, the first course will require a decision at the highest levels and in doing so a far more comprehensive discussion, involving input from a multi disciplinary resource pool will be essential in order to ensure that the new laws will not lose their relevance and effectiveness after a while. Since this will necessarily involve a substantial amount of time and persuasion, this report proceeds on the basis of finding the most effective means of amending and consolidating the existing laws so that there is at least some possibility of meeting the demands required by the new thinking in the area. It is hoped that this incremental experience will spur the policy makers to take greater strides and thereafter attempt to come up with a new Forest Conservation Act in the near future.

THE FOREST ORDINANCE NO. 16 OF 1907

- 2.1 The Forest Ordinance No. 16 of 1907, constitutes the cornerstone of the law relating to forests and plant protection in Sri Lanka. The Ordinance, amended periodically since 1907 by Ordinance No. 11 of 1912, Ordinance No. 24 of 1918, Ordinance No. 23 of 1931, Ordinance No. 16 of 1935, Ordinance No. 30 of 1945, Ordinance No. 8 of 1947, Act No. 34 of 1951, Act No. 49 of 1954, Act No. 13 of 1966, Act No. 56 of 1979, Act No. 13 of 1982 and Act No. 34 of 1988, clearly demonstrates the "ad hocism" of the forestry laws in Sri Lanka. The original intent of the law was to ensure revenue collection for the colonial government and the forests were considered as resources for future exploitation for their economic value. Whilst this approach could have been justified at the time of the enactment of the law when the island's forest cover stood at around 75 per cent of the land area, it is obviously an antiquated concept in the modern context where forest cover stands at around 22 per cent of land area and the earlier rationale has given way to conservation and sustainable use. Thus, in spite of periodic efforts to "modernize" the focus of the law it remains outdated as a whole and requires drastic amendment in several aspects.
- 2.2 The inadequacies of the forestry laws in the present context can be generally set out in two categories. The first being the substantive provisions of the law and the second being the penal provisions. In so far as the first aspect is concerned, the primary deficiency flows from the outdated rationale behind the laws. As previously stated, the Forest Ordinance from its inception has been designed to meet the needs of revenue maximization. Subsequently, over the years, there admittedly has been an attempt to introduce conservation as an objective, but its effectiveness is questionable in the overall context. The following discussion merely attempts to set down some of the more obvious and more important areas that require amendment and it is hoped that this will lead to further discussion and suggestions before the final recommendations are set out.

SUBSTANTIVE PROVISIONS

- 3.1 Initially, one has to reconsider the very scope of the "forests" that the present law attempts to cover. The definitions set out in the Law itself appear to be based on somewhat antiquated concepts, and thus, might need a serious reconsideration having regard to the lands available at the present time, and, the urgency of conservation in particular areas. (See, e.g., Section 3 of the Ordinance). It is also suggested in this context that factors such as need for conservation of genetic resources

and wildlife etc., be also weighed in determining the exact scope of lands that require to be brought within the protection of the law. This will in turn require a major rethinking of the very basic concepts and objectives on the part of all the departments and officials within whose authority the subject matter is scattered at the present time.

- 3.2 The second aspect relating to the substantive provisions of the law that require conceptual reframing relates to the categorization of types of forests, the permissible activity and the methods of management of the said forests. Despite the various attempts made to update the provisions relating thereto, for example, sub sections (c), (d) (e) of section 6 of the Ordinance by Act no. 13 of 1966, over time, it appears essential that there should be fresh rethinking on the coverage of the law. Once again, it might be emphasized that this rethinking cannot be done solely within a department but instead in consultation with those who have experience in connected areas such as soil conservation, agriculture, watershed management, irrigations etc.
- 3.3 In this context, a further recommendation is made in relation to the categorization of types of forests and the extent of exploitation that could be permitted therein. The law as it presently stands, vests the Minister with a fairly wide discretion in permitting certain types of activity within forests. (See for e.g., section 8 of the Ordinance). It is suggested that the amended law provides for areas that require total protection, such as watershed and catchment areas and moreover provide for a specific public hearings procedure if, and when, permission is to be granted for activity in such areas. On the other hand, provision should also be made to widen the scope of community participation and management in forests which are determined to be suitable for such, e.g., buffer zones, and provide for modern means of community or self regulation to inculcate the concepts of "sustainable use". The latter concept in particular which is in a sense not alien to the law as it stands, being reflected in the provisions for "village forests" requires expansion and amplification. Moreover, the further development of the latter concept would mean a positive movement away from the colonial concept of shutting out competing interests and provide the community with a responsibility and a stake in the conservation of the surrounding forests.

PENAL PROVISIONS

- 4.1 The second aspect that requires a serious reconsideration relates to the penal provisions provided by the existing state of the law. The sanctions provided in the law are totally inadequate and do not constitute a deterrence by any means. Moreover, considered in the present context where the primary violators are those engaged in large scale logging the effect of the sanctions are negligible.
- 4.2 In the first instance, it is recommended that the sanctions be increased across the board. To cite examples, section 6 of the Ordinance which relates to "acts prohibited in reserved forests" provides for a "term of imprisonment of a term not exceeding six months or a fine not exceeding five hundred rupees, or when the damage resulting from the offence amounts to more than twenty five rupees, to double the amount of the damage". Section 17 which provides for a penalty for the breach of the provisions of section 14, i.e., "acts prohibited in a village forest" provides for a "fine not exceeding one hundred rupees or imprisonment not exceeding six months". Clearly therefore, the punishment for the offences should be increased drastically to reflect the realities of today.
- 4.3 This however, is only a first step. Quite apart from the increase of the punishment itself, it is recommended that the law should be amended to provide for orders such as rehabilitation of affected areas, either directly or else, though fines or compensation which reflect the true value of the damage caused as result of the activity of the accused.

CONCLUSIONS

- 5.1 These are but some of the more obvious amendments that are required to the existing provisions of the Forest Ordinance. They are not by any means an exhaustive list and hopefully can be expanded upon with the input that is expected during the process of consultation and discussion that this exercise is expected to follow. Ideally, the amendments should also incorporate such innovations such as an advisory committee for forestry which has access to various experts in fields such as those mentioned previously in the course of this report. It is also recommended that the objectives of the Law should not be seen in isolation but instead that objectives of areas such as Fauna and Flora conservation, watershed management, irrigation, soil conservation should also be brought in as criteria in formulating policies to be achieved under the law. It is no understatement with the present state of knowledge on the subject to state that a multi-disciplinary approach to the problem is a sine qua non. In

conclusion, it might be added that the development of a rational policy in this area by the CEA under the provisions of part IV of the National Environmental Act No. 47 of 1980 would undoubtedly facilitate the development and formulation of a comprehensive Forestry Law.

OTHER LAWS

- 6.1 Apart from the Forestry Ordinance, there exist other legislation which has a relevance to the area of Forests and Plant protection and might be referred to briefly at this stage. At the outset however, it needs to be stated that the repeal or the amendment of this group of laws will primarily depend on the content to which the Forests Ordinance can be successfully amended to cover the situations contemplated by the said laws.
- 6.2 In brief, the laws that can be considered relevant in this context are, the Botanic Gardens Ordinance (chapter 275), the Plant Protection Ordinance (chapter 276), the Felling of Trees (control) Ordinance (chapter 266) and the Water Hyacinth Ordinance (chapter 277). Of these, the relevance of the latter for instance, is subject to question, especially in view of the fact that the subject area appears to be adequately covered by other legislation. It is therefore recommended that these laws be reconsidered after the amendments to the Forestry Ordinance are gone into. It is clear however, that the subject matter of many of such laws can be consolidated within the Forest Ordinance.

**PRELIMINARY REVIEW OF THE
STATUTES RELATING TO FAUNA & FLORA**

1. BACKGORUND

The Committee on Environmental Legislation was convened to review current Environmental Legislation in Sri Lanka and recommend areas that need updating, modification, repealing and amalgamation with other laws.

After initial discussion, several sub-committees were formed and each committee was allocated the task of reviewing specific areas of environmental legislation and in the first instance formulating a basic framework within which each sub committee would review the enactments to be reviewed by them.

2. THE FAUNA AND FLORA PROTECTION ORDINANCE

The Fauna and Flora Protection Ordinance was enacted by Act No. 2 of 1937. Thereafter the Ordinance has been amended by Ordinances 31 of 1942, 12 of 1944, 12 of 1945 and by Act Nos 38 of 1949, 44 of 1964, and of 1970. **THE FAUNA AND FLORA PROTECTION ORDINANCE HAS NOT BEEN AMENDED SINCE 1970.**

- 2.1 The fact that the Ordinance has not been amended since 1970 ie: for the last 21 years speaks for itself the state of the law prevailing at present to protect our fauna and flora.

The country has seen rapid development during this period especially during the last decade and this has left the Fauna and Flora Protection Ordinance almost redundant.

3. BASIS FOR REVIEW

The Fauna and Flora Protection Ordinance contains provisions which govern the protection of certain plant and animal life existing in the country. The Ordinance governs a vast area, the preservation of which is extremely important to sustain our environment.

Therefore, the Ordinance needs to be reviewed, taking into consideration the development that has already take place and the effect any recommendation would have on areas where rapid development has already taken place.

The Sub-Committee examined the Fauna and Flora Protection Ordinance and wish to recommend that the said Ordinance reviewed on the following basis :

- a) Existing interpretation and definitions
- b) Penal Provisions

- c) Implementation and procedure
- d) Amalgamation and introduction to existing law.
- e) Effect of/on other statutes concerned with aspects of protecting Fauna & Flara.

3.2

(a) EXISTING INTERPRETATION AND DEFINITION OF AREAS

The Fauna and Flora Protection Ordinance contains several provisions relating to interpretation of words in the statute and definition of areas in the statute. Any review of the ordinance would firstly look into this area since the operation of the law would depend on the definition of areas and the interpretation of the sections contained in the Ordinance.

An example would be part 1 of the ordinance where areas coming under protection of the Ordinance are divided into 5 groups namely

- i) Strict Natural Reserves (SNR)
- ii) National Parks (NP)
- iii) Jungle Corridors (JC)
- iv) Nature Reserves (NR) and
- v) Intermediate Zones (IZ)

The existing definitions of these areas need to be reviewed since these areas were demarcated and established at a time when development activity was limited and establishment of human settlements almost non-existent.

Human activity is limited to various degrees in the 5 areas stated above with the degree of limitation being set out according to the environmental importance of the area.

For example Jungle Corridors may, in today's context, serve little purpose in view of the many settlements which have come up in the middle of these corridors.

Since the whole Ordinance revolves more or less round the areas defined in the Ordinance it is important that these definitions be first looked into before proceeding to review the other provisions in the ordinance.

In this context the interpretations contained in section 72 of the Ordinance also need to be looked into.

(b) PENAL PROVISIONS

The Fauna and Flora Protection Ordinance has not been amended since 1970. Therefore, it need not be said that the Penal provisions in the Ordinance need to be amended since the current provisions are outdated and insufficient to act as a deterrent towards committing an offence spelled out in

the Ordinance.

The fines stated in the Ordinance are of such negligible amounts of money that sometimes the law and the Ordinance is made a mockery of by the imposition of such fines.

The demand and market for poached goods out side and to a lesser extent within Sri Lanka is so great and the fines so negligible that any wrong doer would unhesitatingly run the risk and commit such crime since the benefits would far out weigh the penalties if an offender is brought to justice for an offence under the Ordinance.

As an example one could pose the question as to whether a Rs.1000 fine would be a deterrent to any person to kill and Elephant for its tusks since the tusks would bring in an income which would often be in excess of hundred times the penalty that would be imposed on such person.

(c) **IMPLEMENTATION AND PROCEDURE**

The Ordinance would have to be streamlined with regard to the provisions existing in the Ordinance for implementation of the law and the procedure for such implementation.

These provisions would have to be reviewed with the assistance of officials of the departments who implement the Ordinance.

For this purpose the sub committee would have to incorporate necessary officials from the various departments concerned and any others who may make useful contributions to the sub committee.

(d) **AMALGAMATION AND INTRODUCTION TO EXISTING LAW**

Certain provisions would have to be introduced to the existing legislature. New concepts have been introduced to environmental law in the last two decades and any review of the law would not be complete without examining the adequacy and necessity to introduce these concepts to the Fauna and Flora Protection Ordinance.

Environmental Impact Assessment (EIA) procedure is once such concept which would need examination as to its applicability to the Fauna and Flora Protection Ordinance.

It would also be necessary to examine the need to amalgamate provisions of other enactments with the ordinance to avoid overlapping and conflict.

(e) EFFECT ON/OF OTHER STATUTES CONCERNED WITH ASPECTS OF PROTECTING FAUNA AND FLORA

Review of the ordinance would have to be done keeping in mind the effects of other statutes such as the National Environmental Act and the provisions contained in those Acts relating to the protection of Fauna and Flora.

CONCLUSION

It is recommended that the Fauna and Flora Protection Ordinance be amended on the above basis. However the committee could suggest any further areas that may need reviewing on consideration of other factors.

STATUTES RELATING TO PESTICIDES

PRELIMINARY REPORT

Pesticides by definition and nature entail the destruction of living organisms and as such are a potential hazard to human life unless their formulations and use are controlled by law. For this purpose several laws have been enacted. The following legislation may be considered under the heading "Pesticides" :

- i Control of Pesticides Act, No 33 of 1980
- ii Malathion Control Act, No 22 of 1985
- iii Plant Protection Ordinance, No 10 of 1924
- iv Coconut Research Ordinance, No 29 of 1982
- v Rubber Research Ordinance, No 10 of 1930

On perusal of these laws one may find many areas that require immediate legislation if the dangers of pesticides are to be adequately controlled. The harmful effects of pesticides on the eco-system are incalculable. Besides, pollution of the air, soil and water endangers the human habitat.

1.1 Control of Pesticides Act, No 33 of 1980

An examination of the above Act, and the regulations made thereunder reveal certain deficiencies pertaining to the adequacy of the provisions of the law to remedy the pollution of air, land or water. Some of them are

- i accidental spillage of pesticide formulations;
- ii disposal of pesticide waste;
- iii unsafe disposal of empty pesticide containers;
- iv storage of pesticides in bulk; and
- v out dated pesticides

The institutional framework for enforcing all aspects of the Act on the subject of pesticides has yet to be developed. Inadequacies exist in the lack of resources, such as trained adequate manpower, expertise and skill for evaluating and analyzing toxicological data and pesticide formulations.

Furthermore, selection of the site for the manufacture and storage of pesticides require guidelines, especially from the point of view of pollution of the environment, namely that the selected site be away from residential areas and subject to specified distances from sources of water, taking into consideration the height of land above sea level and seepage.

Currently there is a threat to the environment and to humans from the large number of empty pesticide drums lying about exposed to the atmosphere. There is no incinerator which could be hired out by pesticide firms for the safe disposal of bulk containers in which pesticides have been imported for repacking and sale. It would be appropriate if the Municipal Council or the Central Environmental Authority provide a facility for the incineration of empty drums or in the alternative it should be made mandatory that the Steel Corporation accepts the crushed and decontaminated drums from importers for re-cycling.

Legislation should be enacted or regulations made to prohibit the preparation of pesticides for spraying in places close to streams or other water sources which would be a step in the preventing of pollution of the environment.

Environmental authorities should be given the responsibility of monitoring the environment to see that water and air, in any given area, are free of pesticide residues.

1.2 Malathion Control Act, No 22 of 1985

The Malathion Control Act, contains provisions which prohibits the possession, transport, sale and use of Malathion. According to the Act the sole authority for the import of Malathion is the State and it prohibits the possession, transport use and sale of Malathion by others except persons duly authorized by the Director General of Health Services.

An examination of this Act reveals that for the proper implementation of the provisions of this Act, it is necessary to make regulations under this Act. For the purpose of import, preparation and storage of Malathion it is necessary to make regulations. But unfortunately to date no regulations have been made as regards these areas. Therefore, it is expedient to make these regulations even at this late stage (Act was passed in 1985) setting out the guidelines for import and storage and preparation of this insecticide, bearing in mind the matters referred to in item 1.1

The Acts referred to above mainly concentrate on protecting the health of persons from the injurious effects of pesticides and insecticides but has not considered the aspect of protecting the environment. Therefore, it would be very necessary to introduce new provisions in these Acts for the protection of the environment.

1.3 Coconut Research Ordinance, No 29 of 1928

This Ordinance, last amended in the year 1984, establishes the Coconut Research Board for the purpose of establishing and maintaining a Coconut Research Institute and for furthering scientific research in respect of coconuts and problems connected with the coconut industry and in particular the prevention and cure of diseases and pests.

An examination of the ordinance as amended, does not reveal the manner in which such research is to be carried out. It would be appropriate to set out guidelines in which the research may be carried out so as to protect the environment.

1.4 Rubber Research Ordinance, No 10 of 1930

This Ordinance establishes the Rubber Research Board for the purpose of furthering and developing the rubber industry and for establishing and maintaining a Rubber Research Institute for promoting scientific research in respect of rubber and all problems connected with the rubber industry such as the prevention and cure of diseases, blights and pests.

This Ordinance, too, does not spell out the procedure by which such research will be carried out. It would be appropriate to set out guidelines that should be followed in carrying out research so as to protect the environment.

1.5 Plant Protection Ordinance, No 10 of 1924

This Ordinance provides for the prevention of diseases injurious to or destructive of plants and for sanitation of plants in Sri Lanka. For this purpose regulations may be made under the Act.

These regulations set out limitations of importation of plants and also provides for a notification of Pests Diseases and Weeds to be published by the Minister periodically. But there does not seem to be provision made under these regulations for destruction by burning or otherwise and the proper disposal of any weed or of any plant which is affected or is likely to be affected with any pest or disease.

The punishment, for any contravention of the provisions of this Act, is very minimal hence it would

not act as a deterrent. Therefore, I propose that the punishment be increased to a term of imprisonment of 1 year and a fine of Rs. 1,500/=.

1.6 Customs Ordinance, No 17 of 1869

On examination of this Ordinance there appears to be provision for the Principal Collector of Customs to appoint warehouses for warehousing of goods. In this connection I am of the view that there should be guidelines in selecting the warehouses depending on the substance of the good. (E.g - Food should not be stored where chemicals are stored.)

As regards waste or refuse goods, appropriate provision should be made in the Ordinance as regards the proper disposal or otherwise this could become a hazard to the environment.

Even as regards forfeited goods, which could, if exposed pollute or effect the environment, the Ordinance should provide the measures that should be adopted for disposal.

DANGEROUS SUBSTANCES

PRELIMINARY REPORT

From the nature of certain substances one can come to the conclusion that a particular substance can be classified as dangerous. Petroleum, gas, explosives, firearms are some of the important dangerous substances which could cause health hazards and also affect the environment at large.

2.1 Petroleum Ordinance, No 6 of 1887

This Ordinance regulates the importation, possession, transportation and hawking of Petroleum and other fluids of a like nature. The Ordinance differentiates petroleum from dangerous petroleum.

A person who is in possession of less than fifty gallons of petrol is not subject to the requirement of obtaining a licence. This would enable a person to possess or transport petroleum without any control from the authorities which could cause health hazards and hazardous effects on the environment.

Provisions of the Ordinance enumerate various precautionary measures that could be taken in the event of hawking petroleum. On examination of the Ordinance it is very apparent that the intention of the legislature had been to compel the licences of petroleum to observe certain regulations which had been enacted only on considerations made to avoid accidents caused by explosion or fire. The present day policies for the protection of the environment has no place in this statutes.

Section 17 of this Ordinance states that proper care should be taken to prevent any petroleum escaping into any part of the house or building or of the curtilage thereof or into a drain or sewer. But it does not contain any provision which would prevent the petroleum escaping into a stream or highway which could result in the pollution of the environment and effect a larger public.

The penalties set out in the above Ordinance would definitely not act as a deterrent, hence enhancement of the penalties is inevitable to achieve the objective of protecting the environment.

2.2 Petroleum Products (Regulation and Control of Supplies) Act, No 34 of 1979

This Act provides for the regulation and control of the distribution and use of petroleum products with a view to ensuring the fair distribution of such products, and to the conservation of supplies thereof. The consequences which flow from the activities of distribution and supply, mainly spillage, would have an adverse impact on the environment. Hence additional legislation is required to avoid these situations.

Here too enhancement of the punishment is recommended.

2.3 Firearms Ordinance, No 33 of 1916

This Ordinance was enacted in 1916, when the usage of firearms was of a very limited nature. But in today's context, where the usage of firearms is very liberal, the provisions of this Ordinance are very inadequate.

Under this Ordinance, a licence can be obtained to manufacture guns. It does not contain any provision which would require the manufacturer to take safety measures while manufacturing or where it should be manufactured. Therefore, it would be advisable to make certain amendments which would compel the manufacturer :

- a) to manufacture guns at a place which would be away from residential areas;
- b) to take adequate measures preventing the pollution of the environment from waste emanating from such manufacture.

2.4 Explosives Act, No 21 of 1956

This Act controls and regulates the manufacture, importation, exportation, possession sale, exposure for sale, supply, purchase, use and transport of any explosives.

Regulations should be made to prevent the danger caused to the environment by such explosives.

2.5 Gas Ordinance, No 1 of 1869

This Ordinance relates to the supply of gas to Municipalities and other towns in Sri Lanka through pipe lines. There is no provision in the Ordinance which could meet the present day need or supply of gas. Therefore a complete review of this legislation is necessary.

2.6 Motor Traffic Act, No 14 of 1951

Regulations have been made under this Act relating to the construction of Motor Vehicles with a view to preventing defects which can cause the emission of smoke, oil, grease, etc, which in turn may cause environmental hazards. These regulations were amended in 1983, making more and exhaustive detailed provisions relating to the same. Presently legislative measures are in the process of being made to prohibit the use of Motor Vehicles in any highway in such manner that emit smoke, ash, gas, etc, which can cause injury to persons. It may be recommended that the cause of pollution to the environment also be considered as an offence under this Act.

LEGISLATION ON FERTILIZERS

PRELIMINARY REPORT

1. The Fertilizer Act, No. 21 of 1961
2. Regulation of Fertilizer Act, No. 68 of 1988

Three sources of fertilizer are envisaged in the Regulation of Fertilizer Act, No.68 of 1988. They are -

- a) imports;
- b) manufacture; and
- c) formulations (blends of mixtures of different fertilizer ingredients).

It is possible that imported fertilizer may have adverse effects on the environment, where it is used substantially and regularly. In the case of locally manufactured fertilizer, in addition to the possible adverse effects applicable to imports, there may also be adverse effects from the extraction of raw-material on the environment. Formulation of fertilizer will raise the same questions on environmental pollution or ill-effects as of manufacturing fertilizer.

By its very nature fertilizer will have an effect on the soil (environment) only in the long run. Complete knowledge of its effects may still be lacking. Therefore it is the duty of the authority to keep monitoring the developments in research in this field.

Under the Act, No.68 of 1988, import, manufacture and formulation of fertilizer are required to be done under a licence. Applications for a licence is made on a prescribed form. This enables the Director of the National Fertilizer Secretariat to obtain all the information that he would need to examine the environmental aspects of any proposed importation or manufacture. The forms in use may be reviewed with a view to ensuring that the information required for this purpose is duly submitted.

Factories manufacturing fertilizer should also directly come under the attention of the Central Environmental Authority, which should examine the environmental impacts of the operations of such factories under its own rules.

The institutions that can co-ordinate their activities for the better conservation of the environment in the matter of fertilizer application are the National Fertilizer Secretariat, the Central Environmental Authority and the Sri Lanka Standards Institution.

Administrative arrangements may be made for consultation and co-ordination of the activities of these institutions in respect of fertilizer. The aim of such co-ordination should be to keep out environmentally harmful fertilizers and to ensure that any local manufacturing process does not harm the environment. While it is possible to give effect to this idea administratively it would be desirable to so constitute the Fertilizer Advisory Committee established under the Act, No. 68 of 1988 so as to give the Central Environmental Authority some representation on that Committee.

The Fertilizer Act, No. 21 of 1961 is not in operation. Agriculture and Agrarian Services and Conservation of the Environment are items enumerated in the Concurrent List of the Ninth Schedule to the Constitution. Any amendment of the law will involve consultation and concurrence of the Provincial Councils.

PRELIMINARY REPORT ON HUMAN SETTLEMENT

1. The Environmental Problems that emerged as a result of Human Settlements Development

1.1 Definition of Human Settlements :

Human Settlements constitute of man, and some essential elements required for his existence such as shelter, network of infrastructure and the activities of livelihood of man in a particular locality.

1.2 The above elements are seen as the most basic necessities of man, and in the process of meeting these needs, the resources such as land and land resources, water, and air become inevitable things to exploit. However, the unplanned as well as the improper use of these resources give rise to many environmental problems. Such problems, if allowed to continue unarrested, would badly hinder the process of sustainable utilization of the resources as well as pose a threat to man's existence.

1.3 Some of the common environmental problems due to Human Settlements development are as follows

i) Unplanned and uncontrolled destruction of forest reserves.

Areas reserved as range forests and/or village forests are being cleared for establishment of new settlements as well as for expansion of existing settlements. This results in a loss of ecological balance in such areas and thereby contribute to natural disasters such as land slides, droughts, etc.

ii) Encroachment on reservation lands, particularly lands reserved for rivers and water streams. Cutting of trees, use of such land for agriculture or any other purpose including construction of structures and digging of holes, etc., all give rise to soil erosion and depletion of such water sources.

iii) Unauthorised extraction of sand, soil, earth, and any other mineral resources from areas not designated for such purposes would

result in destruction of the land form, drainage system and the water sources all of which would contribute to environmental problems.

- iv) Clearing of large tracts of land especially hilly lands for chena, tobacco and vegetable cultivation etc, without taking adequate measures for the prevention of soil erosion, and for proper drainage, etc., would lead to natural hazards.
- v) Dumping and burning of agricultural residuals (paddy husk, saw dust, etc.,) in areas not designated for such purposes (i.e along main access roads, canals and paddy fields) would contribute to environmental problems such as water and air pollution.
- vi) Use of high lands (lands located above 5000 MSL) for cultivation and construction of structures to be used for purposes not designated, also could lead to environmental problems.
- vii) Emergence of highly congested residential areas with inadequate public health services, etc, as a result of illegal activities such as boarding houses to provide accommodation for migrant workers into towns, give rise to many environmental problems, (eg: pollution of drains, ground water contamination, etc.)
- viii) Encroachment and illegal occupation on the coastal belt reservation by squatters as well as by business establishments such as hotels and factories, would contribute to the destruction of the environment in the coastal belt.
- ix) Unplanned and illegal extraction of coral reef is a continuing destruction to the sea shore which gives rise to sea erosion a man made environmental problem.
- x) Unplanned and illegal felling and reclamation of low-lying areas including paddy fields not only disturb the drainage of the area but its ecology as well.
- xi) Discharging of waste water and chemical waste etc. into public drains and other

water ways by industrial and other institutions, contribute towards aggravating pollution of such drainage systems and water sources.

- 1.4 The existing Laws (see Annexure attached) seem to have covered the subject matters of almost all the problems except the extensions to houses discussed under (vii) above. However, the ineffective enforcement/implementation of such Laws may be a result of non-existence of institutional frame work at the local level for executing such powers and/or the ineffectiveness of the penalties prescribed for deviations/breaches of such laws. Lack of comprehensive coverage of the particular subject matter could also be one of the reasons for ineffective implementation of the provisions of such Laws. Therefore introducing necessary revisions in respect of penalties for deviation/breach of laws and comprehensive coverage of subject matter, and also creation of necessary institutional frame work at the local level for proper implementation of the provisions of the law could be recorded as key aspects to be dealt with. The remedial measures contained in these Laws too would require updating to make them more effective.

ANNEX

Laws relevant to the problems discussed under
item 1:3 above -

- 1 Land Development Ordinance (Chap. 464)
- 2 Soil Conservation Act. No 25 of 1951.
- 3 Housing and Town Improvement Ordinance (Chap. 268)
- 4 Urban Development Authority Law No 41 of 1978
- 5 Coast Conservation Act, No 57 of 1981
- 6 Water Resources Board Act, No 29 of 1964
- 7 Forest Ordinance (Chap. 451)
- 8 Felling of trees (Control Act (Chap. 452)
- 9 Irrigation Ordinance (Chap. 453)
- 10 Crown Land Ordinance (Chap. 454)
- 11 Mines and minerals Law No 4 of 1973
- 12 State Gem Corporation Act, No 13 of 1971

2. Mahaweli Authority Of Sri Lanka

2.1 Main environmental issues in downstream Mahaweli areas are as follows :-

- a) health hazards such as water-borne and vector-borne diseases;
- b) loss of land earmarked for forestry, in order to make way for
 - i) industries;
 - ii) urbanization; and
 - iii) to accommodate a second generation
- c) deviations from the proposed land use;
- d) development of salinity in agricultural lands due to poor planning;
- e) encroachment on
 - i) flood plains/wetland;
 - ii) reservations;
 - iii) protected areas;
 - iv) grazing lands;
- f) lack of an overall plan for the sustainable maintenance of a Settlement system taking into consideration the fuel wood requirements, forestry, pasture, medical plants, etc. of the settlers;
- g) deforestation;
- h) high risk of over grazing on limited grazing lands;
- i) Wildlife habitats :
 - i) reduction of natural wild life habitats;
 - ii) loss of large numbers of wild life;
 - iii) movement of wild life into settlement areas due to human activity in the reserves;
 - iv) disruptions in the emigration and immigration patterns of animals and species;

- j) poor housing conditions of settlers which cause respiratory diseases;
- k) over use of pesticides in agricultural land;
- l) degradation of agricultural land; and
- m) deterioration of the water quality.

2.2 The current settlement plan of the Mahaweli Development Programme is the main cause for the above mentioned environmental issues.

2.3 Some of these issues are addressed by the following existing laws;

- a) Forest Ordinance;
- b) Irrigation Ordinance;
- c) Crown Lands Ordinance;
- d) Fauna & Flora Protection Ordinance;
- e) Flood Protection Ordinance;
- f) Land Development Ordinance;
- g) Wells & Pits Ordinance.

2.4 The administrative framework can be summarised as follows :

- a) Mahaweli Authority of Sri Lanka administration;
- b) activities of other Government agencies, such as
 Department of Health, Education, Postal,
 Police and Ministry of Public
 Administration, Provincial Councils.
- c) Non Governmental Organization activities
 e.g. farmer organizations.

2.5 Steps are being taken to address the environmental issues in Mahaweli areas. There are existing laws to address the environmental issues. However, it is important to note that there are constraints in the existing administrative system. The present approach to address the environmental issues in the Mahaweli area is divided among several Departments. There is therefore a need that all activities should be integrated and brought under a more unified structure.

- 2.6 a) The following main issues may be included in one piece of legislation addressing the subject matter of this report.
- b) A legal framework is indispensable for efficient functioning of environmental activities in Mahaweli areas. Therefore, a new legislation is proposed in order to address the issues relating to human settlement activities in the Mahaweli areas.

No.	Problem Area	Necessary action that should be taken:
1.	In the project area, increase the population and a number of diseases such as water-borne and viral, is anticipated.	i. provide better health educational programme(s) ii. improve cultural practices of the settlers; iii. provide safe and sufficient drinking water and adequate sanitation facilities.
2.	Arrival of new settlers	Provide - i Welfare ii Health and iii Safe drinking water
3.	Reduced canal flows and seepage from the canals will create small water-bodies which will be the breeding centres for various vectors. e.g. malaria.	The Farmer Organizations should have the right to implement certain provisions of the Irrigation Ordinance, eg. to punish those not performing their own maintenance.
4.	Existing cultural practices	Implement an integrated pest control system.
5.	Adjacent to the wildlife habitats, areas are demarcated as high risk zones for crop damage.	Implement an effective driving out-of wildlife programme.
6.	Seasonal migrants	Provide health, welfare and accommodation facilities.
7.	Deaths due to wrong use of Pesticides	Awareness programmes through Farmer Organizations. Banned chemicals that should not be used.
8.	Delay in construction of permanent houses with proper ventilation is a cause of high respiratory diseases.	

- c) The Mahaweli Authority of Sri Lanka management system was modeled ten years ago to meet the demands of an accelerated settlement programme. It has elements of a tight bureaucratic system. This model must now undergo certain changes to fit into the new objectives of the Mahaweli Authority of Sri Lanka, like for example, participatory management and working closely with farmer organizations. The existing dependency syndrome by settlers must be replaced by self reliance.
- d) The Joint Cabinet memorandum submitted by the Ministry of Lands, Irrigation and Mahaweli Development and the Ministry of Agricultural Development and Research outlined the policy guidelines for participatory management in Irrigation systems. This Cabinet Paper in January 1989 recommended the following :
 - i. that participatory management is accepted by the Government as a policy with a view to improving the overall management performance;
 - ii. government to continue providing funds to manage the Irrigation Ordinance;
 - iii. provide for the transfer of ownership of the irrigation net-work over a period of time.
- e) The Mahaweli Project is an interprovincial subject. However, on completion, certain sectors like health, education and other devolved subjects are to be handed over to the Provincial Councils. The responsibility for these will be in the Provincial Councils. For example, Anti-Malaria Campaign is a Provincial subject and this will have to be done by the Provincial Councils in the Mahaweli areas. Necessary legal backing will be required for such activities.

2.7 Necessary action should be taken to amend Schedule B of the Mahaweli Authority of Sri Lanka Act to enable the Mahaweli Officials to implement respective environmental laws.

2.8 A comprehensive training and awareness programme is implement these environmental legislation has to be planned to cover staff as well as settlers involved in the Mahaweli Systems.

3. Urban Development Authority Act

This Act also provides for development of environmental standards, preparation of schemes for environmental improvement in development areas and power to cause clearance of slum and shanty areas.

Some of the significant environmental issues that need to be settled in relation to urban human settlements are as follows :

Pollution, which is a main issue that can have several aspects such as Chemical Pollution, Air Pollution, Noise Pollution, etc. Under Section 80 of the Urban Development Authority Law provision is made to develop environmental standards, and prepare schemes for environmental improvements in such areas. This provision is applicable in the development areas declared under the Urban Development Authority Act for the purposes of integrated planning and implementation of social and physical development. In keeping with the above there are certain guidelines provided in the Regulations in some areas.

Further provisions have been made in the Housing and Town Improvement Ordinance and the Pradeshiya Sabhas Act to improve sanitary standards in Human Settlement areas.

Although the Urban Development Authority Act has provision to specify environmental standards there is no specific provisions in the Act for legal action for violation of these standards.

In my opinion the Central Environmental Authority is the main body who can control environmental standards and as such their law has to be amended in order to make sufficient provision to implement same in the Central Government. The Urban Development Authority when approving the building applications seek the approval of the Central Environmental Authority for environmental matters.

Pradeshiya Sabhas Act will have to be studied to form an opinion as to whether these environmental standards have been laid down. Therefore it is advisable to study this Act and then to amend the Act in the relevant areas to ensure the implementation of these standards.

LOCAL ADMINISTRATION

PRELIMINARY REPORT

The significant environmental issues relating to Local Authority administration are as follows :

- (1) Non-clearing of streets and open spaces;
- (2) Irregularity in the collection and removal of refuse and garbage;
- (3) Lack of properly planned dumping sites or land fill sites;
- (4) Interruption of surface drainage by unplanned filling for building purposes; stagnation due to obstruction of drainage lines which become breeding grounds for mosquitoes and flies;
- (5) Improper maintenance of sewers, latrines and cesspits;
- (6) Discharge of affluent from mills and factories to drains which lead to pollution of drains and streams;
- (7) Pollution of streams and water courses by washing animals and discharging garbage or emptying drains into them.
- (8) Sound and air pollution caused by factories;
- (9) Nuisances;
- (10) Other environmental issues on activities like urban dairies, laundries and unauthorised structures, etc.

The three main statutes which cover the above are the Municipal Councils Ordinance, Urban Councils Ordinance and Pradhesiya Sabha Act. These legislation deal with the detection and abatement of nuisances, control and administration of all matters relating to public health, public utility services and abatement of Industrial Pollution. There are also other Ordinances like Dairies Ordinance, Nuisances Ordinance, Laundries Ordinance etc.

Local Authorities are the institutions responsible for implementing the provisions concerned. Powers are vested in the Councils.

For Local Authorities, the two major programmes covering the environmental issues are public health, sanitation and water supply. There are Medical officers, para-medical officers and Technical Officers entrusted with these functions.

A Greater number of Local Authorities depend on the Central Government and now the Provincial Councils for obtaining the services of MOHH, QHII, PHNN and other guidance. There had been problems as regards the coordination of this work, and command of officers sent to Local Authorities.

Local Authorities depend on the National Water Supply and Drainage Board for guidance and assistance regarding surface drainage schemes. Other institutions to depend are Central Environmental Authority and Land Reclamation Board.

Existing Institutional and administrative framework is inadequate. Existing staff in Local Authorities is insufficient, Their capacities are inadequate as they are not well trained. The machinery equipment and other facilities available within the framework are also inadequate.

Moreover, the Authorities face several constraints. Some of them are,

- (a) lack of adequate funds;
- (b) lack of experts;
- (c) poor training facilities;
- (d) inadequacy of certain facilities like laboratories for testing;
- (e) poor support from the people.

New Legislation should be made to regulate all kinds of filling for construction and also to penalise those who are responsible for supervision.

Existing legislation as to control of pollution caused by factories should be amended to empower Local Authorities to take stringent measures.

Existing provisions for punishments should be enhanced.

Provision to establish an "award fund" may be made under the Local Authority Legislation to encourage detections of offences relating to environmental issues.

A special unit in each Local Authority should be established to take charge of the environmental functions headed by the head of the Local Authority. This unit should work in coordination with other sections in the Local Authority.

There should be an environmental officer responsible to the Head of the Local Authority. He should be given powers to carry out inspections, testing and to take immediate action, where necessary.

Public awareness programmes on environmental issues may be organized by Gramodaya Mandalayas and various non-Governmental Organizations. There should be public participation.

All Ministries, Government Departments Corporations and other sectors should cooperate with Local Authorities in protecting the environment.

There should be provision to sue these Government institutions which fail to protect the environment.

MINERALS, ENERGY, TRANSPORT

THIS PRELIMINARY REPORT HAS BEEN COMPILED AS A DOCUMENT TO INITIATE A PROCESS OF REVIEW OF THE ENVIRONMENT CONTENT OF THE LAWS RELATING TO MINES AND MINERALS, ENERGY AND TRANSPORT. THE REPORT DOES NOT PURPORT TO ANALYSE THE PROVISIONS OF THE LAWS IN DETAIL, INSTEAD MERELY POINTS OUT THE OBVIOUS DEFICIENCIES WITHIN THE LAWS. DRAWING ON THE INPUT WHICH IS HOPED FOR, IN THE COURSE OF THIS SEMINAR AND DISCUSSIONS WITH EXPERTS IN EACH AREA TO PROPOSE AND TO FORMULATE MODEL PROVISIONS TO DEAL WITH ENVIRONMENTAL LAWS.

**LAWS RELATING TO MINES & MINERALS, ENERGY AND
TRANSPORT**

PRELIMINARY REPORT

MINES & MINERALS

At the outset it is to be observed that most of the laws pertaining to this area had been enacted with an orientation towards exploitation of natural resources and collection of revenue. No attention has been paid to the environmental impacts that could arise out of such activities.

Certain recent laws have departed from the said objectives and had roped in provisions which are environmental in character, the Coast Conservation Act being an example.

The objective of this exercise is to review the existing laws with the environmental conservation in mind and with the idea of introducing new laws by way of amending the existing laws and incorporating new provisions.

MINES AND MINERALS ACT NO. 4 OF 1973

This is a main piece of legislation governing the areas of mining in Sri Lanka with the few exceptions, of the Salt Act, the State Gem Corporation Act and the Radio Active Minerals Act. The scope of the Act covers a wide area such as regulating, mining, prospecting for, collection, processing, sale and export of minerals. The Act also provides for the health and safety of the workers involved in the trade. Considering the provisions of the Act, it is quite apparent that it lacks effective provisions to avert adverse effects on the environment and in the area of resource management, by present day concepts. Moreover the Act has not given any consideration to vital issues such as land use policies and their environmental impact.

We have to bear in mind that it is also equally important to introduce effective provisions to implement the laws and ensure that the objectives are met.

Considering the provisions, the present Act reveal a number of areas which could have a direct bearing on the environment. Regulations as to digging mines, provisions for restoration, effective regulations to implement and penal provisions are inadequate to cater to the present day needs. The laws pertaining to the above areas need complete revision.

These are some of the areas that had been identified as requiring revision and affect almost all the prevalent Acts pertaining to mines and minerals.

Before recommending new provisions an extensive study is necessary with regard to the practicality, the implementation and effectiveness of the proposed amendments. For example, it is desirable to introduce provisions "environmental impact assessment".

There are certain areas where no effective laws are in force in the area of discussion. For example, sand mining. No effective laws are available to check or control sand mining.

Environment Consequences of Law

Relating to Transport in Sri Lanka

Issues relating to Transport are dealt with by several statutes, namely the Transport Board Act, No. 19 of 78, the Motor traffic Act No. 14 of 51 and its amendments. The Vehicles Act No. 4 of 1916 and its amendments. The Boats Act No. 4 of 1900 and its amendments. The Launches Ordinance No. 11 of 1907. In addition, the Thoroughfares Ordinance No. 10 of 1861, the Municipal Councils Ordinance and the Urban Development Authority Act and Town & Country Planning Act also require to be examined.

An examination of these laws indicate that apart from the Motor Traffic Act, the other Acts specified do not in any way contain provisions relating to environmental issues. Several issues arise relating to environmental concerns in these areas. In the case of some of the issues, the existing provisions make some reference thereto but with very limited effectiveness for example :-

The Motor Traffic Act has provisions made by way of Gazette which makes it an offence for a person to be a nuisance by emitting smoke other than what is permitted. Obviously, this is a key issue that requires to be resolved in the present context. However, a close examination of the existing provisions reveals that the police who implement and enforce the Motor Traffic Act do not have any specific criteria or equipment measure volume or toxicity of the emission of the vehicles, thus negating the affect of the provisions.

Apart from this there is no other specific provisions in the Motor Traffic Act which relate to environmental aspects. The Vehicles Ordinance is an Ordinance to amend and consolidate the law relating to vehicles other than motor vehicles. The definition of the vehicle in the Ordinance includes coaches, tram-cars and mechanically propelled vehicles capable for being used as a means of transportation on land. The Boats Ordinance provides the law regulating the carriage of passengers and goods by boats. This law makes it mandatory for any boat carrying passengers or goods to obtain a licence. However, hereto no provision is made to incorporate any environmental guidelines within this Ordinance. The Thoroughfares Ordinance provides for the law relating to public thoroughfares in Sri Lanka. An

examination of this law reveals that the law provides for an implementing official making it possible to take action against certain environmentally hazardous, activities or actions which might be of damaging to the environment.

After examination of all these statutes there are two possible ways of recommending a review of the existing legislation:

- a) by incorporating environmental provisions into existing laws. or;
- b) by introducing new statute which would cover the environment conservation aspects relating to transport in Sri Lanka.

In relation to (a) the Statutes can be examined in detail and comprehensive Ordinance could be introduced to safeguard the environment. For e.g. to the Boats Ordinance; provisions could be introduced to regulate emission from the boats at the time of granting permits. In the Motor Traffic Act new standards and criteria could be set for emissions from motor vehicles and penalties incorporated to the Statute with regard to such emissions. In this connection one would also need to examine the air quality standards prescribed by the Central Environmental Authority under the National Environmental Act.

At this stage it is observed the desirability formulating a policy to taking into consideration the environmental aspects in development of highway roads.

ENERGY

The main Acts pertaining to this area are Electricity Act, Electricity Board Act, Petroleum Ordinance, the Atomic Energy Authority Act and the Gas ordinance.

ELECTRICITY ACT

The objective of this Act is to regulate the generation, transmission, transformation, distribution, supply and use of electricity.

Looking back at the statistics it is evident that the demand for electricity has grown rapidly and is still on the increase. It is therefore important to monitor the expansion of electricity generation considering the impact it could have on the environment. Upto the recent past, the sole responsibility of supply and distribution of electricity had been exercised by the Electricity Board. But with the recent change of policy private sector had partially taken over the supply of the same. Thus the necessity to streamline the present laws as regard to supply with the environmental conversation in mind has arisen. It is therefore all the more necessary to ensure that environmental guidelines are incorporated in the laws.

The Electricity Act in general sets certain standards in relation to construction work relating to the generation of electricity. It also provides prior scrutiny and approval of work plans connected to the same (sections 12 and 13) control of the supply of energy (Section 30) It is emphasized at this juncture that these provisions should be broad based to cover the areas of environmental concern.

Under the Electricity Board Act the Board is empowered to conduct research into matters affecting the generation, distribution and supply of electricity and in this context too revision of the existing laws are a necessity. In cases of setting up new plants for generation of electricity, environmental impact assessments are desirable, as became apparent in the project for a coal-fire power generating station in the East coast of Sri Lanka where the project was to go ahead without considering a number of environmental relate factors.

PETROLEUM ORDINANCE

Originally enacted in 1887 this Act had not been amended since 1956. The objective of the said Ordinance is to regulate the importation, possession, transportation, hawking of petroleum. Most of the provisions embodied therein are now redundant as the State solely controls the importation and distribution of petroleum after setting up the Ceylon Petroleum Corporation.

The Act provides the power to the Minister to frame regulations as regard to -

- a) determining the ports at which petroleum may be discharged;
- b) controlling the quantity of petroleum that may be possessed or transported by individuals;
- c) granting a licence to store petroleum etc.,

All these matters are relevant since such activities could have a bearing on a number of environmental factors. Therefore additional provisions controlling such activities are necessary. Special attention also has to be paid to the areas of hawking of petroleum as well.

Laws and Regulations are lacking in a number of areas where the environmental factors could be effected. One such aspect is refining of crude-oil where monitoring the quality of the final product has to be monitored for the reason that it has a direct bearing on the environment.

Although under the regulations penalties can be imposed for not taking precautions to prevent the substances escaping into drains or sewers or accidents by fire, the penalty for non compliance is grossly inadequate and needs to be revised. Another aspect which will have to be looked into is the area of exploration and exploitation of petroleum which is in the sole hands of the Petroleum Corporation. Here again formulation of a policy to look into the matters connected to the environment arising out of such activities should be explored.

GAS ORDINANCE

An Ordinance relating to supply of Gas to Municipalities and towns. Most of the provisions embodied herein are now defunct as the usage of gas has changed considerably within the past 2 decades. Therefore the entire Act needs to be revised in line with the present day use of gas.

ATOMIC ENERGY AUTHORITY ACT

Enacted with the objective of setting up an Atomic Energy Authority and an Advisory Committee, powers are vested in the authority by section 16 of the Act in regard to production, use and disposal of Atomic Energy. The Authority also has the power to control the sale and supply of radio active materials. Section 20 of the Atomic Energy Authority Act expressly deals with the manufacture of radio active materials and provides for regulations thereof. Provisions are further amplified in sub section 1a, 1b, and 1c of section 20 where controls are imposed in production and storage of radio active materials. It also empowers the Minister in charge of subject of health to make regulations in this regard. Considering the entirety of the

provisions embodied in this Act it could be said the Act provides comprehensive environmental protection in this area. Yet, with further developments and usage of radio active material it would be necessary to strengthen the provisions where necessary.

LAND USE AND AGRICULTURE

PRELIMINARY REPORT

On reviewing the laws relating to agriculture and land use and attempting to define ways in which they should be amended so as to enhance environmental protection, we wish to first make the following points:

Laws relating to land use and agricultural development reflect the policies of Governments which have been implemented over decades. They involve very wide policy issues including economic, sociological and political. Before any changes can be made in the laws, we have to identify the policies which the government is prepared to implement. We do not believe that a Committee such as this can suggest amendments to these laws on the basis of the personal views of the members.

Under the circumstances we believe that we should begin by reaching consensus on this point and we should call for the views of both the government and members of the public.

As an example, we can cite the Land Development Ordinance (Chapter 300 of the Legislative Enactments 1980 revised edition). This Ordinance which relates to the development and alienation of State land is basically a set of regulations on how this should be done. It makes provisions for the appointment of a Land Commissioner, the issuing of permits and grants, how succession to alienated lands would be governed, what rights the recipients would have over their land and what degree of ownership.

In order to amend this statute we could take two approaches :

- a) We could insert a section relating to environmental protection and provide that in alienating and developing State lands these measures should be adhered to. We do not believe, however, that this would serve much purpose in the long term.
- b) Alternatively, it may be necessary to radically re-think the policy and goals behind this statute. For example, what degree of ownership do the people have over these lands? If they believe that they have limited ownership and cannot even pass it on to their children will they preserve and care for these lands and use them in an environmentally sustainable manner or will they strip them of every resource possible so as to get as many benefits as they can in the short term? If it is found that the statute does not give them the rights of ownership which they may want, will the government be prepared to amend its policy and change the statute accordingly? This issue in turn would give rise to other issues. For instance if the people want to mortgage or raise loans on their land, would banks recognise their title? How would they be persuaded to do so? What would the impact of such tenures be upon macro and micro climates and environments?

Thus there are different ways of approaching this question of revising the environmental legislation in this country. Environmental issues cut across all boundaries and involve social, political, economic and other questions and we do not believe that we can or should consider it as an isolated factor. Under the circumstances should we approach it in a broad perspective and re-think policy altogether or simply take it statute by statute, section by section and insert clauses "relating to environmental protection" in each statute?

In this report, we have taken some of the significant laws and identified issues which we feel should be addressed. This list is not meant to be comprehensive and these issues are cited merely as examples. We feel that it is possible to approach some of these laws on the basis of option (a) and some of these have been included in Appendix (A).

On the other hand many should be approached on the basis of option (b) and we feel that in doing so issues such as the following should be addressed :

Approximately 80% of the land in Sri Lanka is owned by the State while a large percentage of the population remains landless. Some of these statutes regulate the alienation and settlement of state land. We feel that the State should divest itself of this land as expeditiously as possible and grant it to landless people.

The landlessness and consequent poverty among the people leads them to unlawfully encroach upon State land often in ecologically sensitive places. It is often not possible for the State to evict them and in many instances it may be compelled to regularise their possession.

In order to prevent such situations it is suggested that the National Land Commission established under the 13th Amendment of the Constitution should be entrusted with the task of,

- a) identifying on a scientific basis, areas suitable for agriculture, settlements, and other purposes and those which should be protected areas;
- b) expedite the alienation to the people, the land suitable for cultivation and settlement.

A significant factor of many of the present laws relating to land settlement is that the recipients are not granted absolute rights of ownership including the right to bequeath it to their heirs freely. Many of the statutes (E.g Third Schedule of the Land Development Ordinance; Section 10 of the Land Grants (Special Provisions Act) provide that the land in question can be bequeathed only to one heir in a specified order. This limitation was perhaps introduced to prevent fragmentation of the land.

However, this often creates problems among the second generation of settlers, since all but one of the heirs of the original

settler would find themselves landless on his death, thus increasing the numbers of this category of people.

Expert opinion appears to be divided on the issue of whether fragmentation is undesirable or not and this should be closely studied. It should also be noted that in taking such measures to avoid the fragmentation of land it is conceivable that a host of other serious problems could be created in the process.

When studying the laws relating to land settlement and development. We ourselves were confused by the similarities and overlapping of many of these statutes. The administrative framework also appears to be ad hoc and incohesive.

In the light of the fact that the 13th Amendment has established a National Land Commission, we should investigate the possibility of either consolidating these laws or repealing them and enacting a single Land Use Policy statute.

In an event many of these statutes may have to be reviewed in the light of the 13th Amendment to conform with the division of powers and functions envisaged by what is a constitutional provision. (An analysis of the 13th Amendment as well as some of the important statutes relating to land settlement and development are attached as Annex B).

Conclusion

We feel that once the issues have been identified, a committee of experts drawn from the relevant fields should be convened. This committee could work together with the lawyers to suggest legislative intervention where necessary to promote ecologically sustainable land use. It should be noted that environmental protection and conservation are not isolated from but are directly related to economic, sociological, political and other factors and unless these problems are addressed we will not succeed in realising our objective of protecting the environment.

APPENDIX A

While the favoured option of the committee would be a fundamental re-evaluation of the laws in this area with reference to policy, environmental protection and the need for consolidation, thereby making the laws more intelligible and accessible to the citizen, amendment of the existing legislation on an ad hoc basis to promote environmental protection is also possible. These amendments could ensure that environmental perspectives are taken into consideration by the various institutions created by the legislation. This could broadly be done in two ways:-

- 1) Amendments to the composition of the institutions themselves.
- 2) Amendments to the objectives of the institutions.

1. Example :-

Amendments could be made to :

- a. Section 56 of the Tea Control Act
- b. Section 4 of the Tea Small Holdings Development Law
- c. Section 6 of the Sri Lanka Tea Board Law
- d. Section 10 of the Tea and Rubber Estates (Control of Fragmentation Act)
- e. Section 3 of the Rubber Research Ordinance
- f. Section 10 of the State Agricultural Corporation act
- g. Section 4 of the Mahaweli Authority of Sri Lanka Act
- i. Section 3 and 26 of the Coconut Development Act

and other similar provisions in other legislation in this area to ensure that nominees of the Minister of Environment and even of NGOs committed to the protection of the environment, are members of the various boards committees constituted by these legislation. This will ensure that an environmental perspective is considered by such institutions in formulating their policies and conducting their affairs.

2. Example :-

Amendments could be introduced to the Coconut Development act to ensure that environmental protection is one of the objectives of the Boards constituted under the Act.

Section 20 describes the powers and functions, protection of the soil, and land with specific reference to environmental issues is not spelled out. A suitable amendment could be introduced.

section 45 of the Act provides that the Coconut Development Authority or a Board could manage a coconut plantation" to ensure the full and efficient use of such plantation." This section could be amended to require the plantation to be managed in an ecologically sustainable manner.

3. The committee is also of the view that, as far as possible, legislation dealing with agriculture and land use should permit citizens' suits. This would ensure that the State alone does not bear the burden to initiate action to redress violation of laws and therefore improve the implementation of existing laws. It seems clear that while some improvements can be made in the substance of the existing legislation, the main shortcoming is the lack of implementation of the laws. Citizens' suits, whereby concerned citizens and interested groups could initiate proceedings, will enhance the realisation of this objective.
4. The fines and punishments specified in the various laws can be increased to suit modern conditions.

Example :-

Section 106 (1) of the Land Development Ordinance stipulates a fine "not exceeding" Rs.100/- if a permit holder violates a condition of the permit. This amount could be increased to a sum "not less than" a specified amount.

Annex (B)

Soil Conservation Act

One drawback of this act is that it deals only with the question of erosion and does not consider other aspects of soil degradation. Other issues which should be addressed in this Act include but are not limited to:

- Water management methods
- Misuse of chemicals which cause chemical poisoning of soil
- Construction work
- Inappropriate agronomic practices - the best example being that of tobacco cultivation
- Other human activities such as construction sites, roads, housing settlements etc.

Soil conservation cannot be implemented by simply considering factors such as erosion in isolation and attempting to take preventive measures. Soil conservation should be approached on the basis of a comprehensive and integrated management system. The entire statute should be revised in the light of this approach. The inclusion of a citizens suits provision may also be pertinent.

State Lands Ordinance

Part 1

This deals with the power of the State to sell, lease, grant or otherwise dispose of State lands. It seems to vest a great deal of discretion in the President in doing this, especially when the recipient is a private individual or institution. Eg. Section 5. Perhaps there should be uniform guidelines drawn up in this regard. It may also be desirable for member of the public to be able to challenge the grant by the inclusion of citizens action suit.

Section 14

This Section which gives the President the power to mitigate or release any of the terms and conditions laid out in the original grant reflects the wide and perhaps undesirable powers which he has in regard to alienating State lands.

Part III

The President also has the right to vest state lands in the military or in local authorities. Land would usually be vested in the military for security purposes and very often for urgent reasons. The road cut through Pidurutalagala is an example of this. While this factor is appreciated it should also be possible to put some kind of check on such unnecessary environmental damage. Again, Pidurutalagala is a good example. The same arguments would apply in the case of land alienated to local authorities.

Part V

This part gives power to local authorities the power to alienate land vested in them under this Ordinance or any other written law. The sanction of the Minister is sufficient for this purpose. [Sec. 47 (2)]. Here too, there do not appear to be any uniform guidelines to determine when the local authorities could alienate such land.

Part VI

This is the only section which has any bearing on environmental issues.

Part VIII

This section also reflects the unrestricted powers granted to the President to carry on construction on the foreshore. [See Section 60]. However this section is now probably subject to the provisions of the National Environmental Act. However, this Section should also be amended to reflect environmental concerns.

Section 78

This section states that in considering an application for a permit to divert water or carry on construction work, etc. with regard to any lake or stream, the Government Agent shall take into consideration specified factors including the rights of riparian proprietors who may be affected and also the rights and requirements of the state. This provision should include an express requirement regarding environmental factors and also give standing to members of the public to challenge any grant under this section.

CONCLUSION

This Ordinance reflects the policies of the Government in the alienation of State lands. It cannot be amended piecemeal. The policy issues with regard to the alienation of such land, including and environmental, social and political factors should be identified and the entire statute should be revamped accordingly. This is probably one of the most politically sensitive areas and the basis on which such lands are used should be clearly formulated. Further, an unrestricted power should not be given to either the central government or the local bodies to alienate such land at will.

Land Grants (Special Provisions) Act

This is an Act to provide for the transfer of state land to any citizen of Sri Lanka over the age of 18 years in accordance with Section 3. According to this Section the President has the authority/discretion to do this.

It is felt that this power should not be vested in the President but preferably in a Land Commission which would be politically independent. Since the 13th Amendment provides for a National Land Commission, it must be determined whether and how the functions of the Commission are in conflict with the power of the President.

It should be noted that the grantees do not receive absolute ownership over the land which is alienated to them. The environmental implications of this should be looked into.

Section 14 - under this Section "any alluvial or other accretion to any State land transferred under Section 3 shall, together with all rights appertaining or belonging to such accretion, be the property of the State and is hereby declared to be vested in the State". This section should be reviewed in the light of any changes which are recommended in the degree of ownership.

Land Settlement Ordinance

This Act addresses issues of disputes of ownership between the State and individuals. We should address to what extent the State should be entitled to acquire land which may not be subject to formal ownership by anyone but which may nevertheless serve the interests of a community in some respect.

Section 10 - of the Act recognises the concept of communal reserves and community participation in land use planning. It is possible that this concept could be broadened and made applicable in more situations.

Section 4 has to be reviewed in the light of our previous recommendation.

Section 11 (1) - a nominee of the Ministry of Environment should be included on this Board.

The possibility of the following statutes being amalgamated into one comprehensive statute should be considered :

- State Lands Ordinance
- Land Development Ordinance
- Land Grants (Special Provisions) Act
- Lands Resumption Ordinance
- State Landmarks Ordinance
- State Land (Claims) Ordinance
- Land Acquisition Act
- Land Reform Law
- Land Settlement Ordinance

All these statutes deal with the alienation of state land and its development, the taking over of private lands by the state, the recovery of state land, land settlements, etc. A further study will be required to analyze whether and to what extent these statutes are in conflict with each other. It must also be noted that many of these statutes originated in the era of British colonial rule. Our concepts of land ownership and land use have necessarily undergone radical changes in the four decades of independence and it must be questioned whether these statutes continue to be relevant today. Sri Lanka at the moment lacks a comprehensive statute relating to land use and it may be preferable to formulate such a statute rather than attempt to amend each and every statute which is currently on the statute books.

The Thirteenth Amendment

The impact of the 13th Amendment of the Constitution on the subject matter of this report is ambiguous.

Paragraph 9 of the Ninth Schedule (list 1 - Provincial Council List) states that the following subjects would come within the purview of Provincial Councils:-

9. Agriculture and Agrarian Services;

- 9.1 Agriculture including agricultural extensions, promotions and education for provincial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, State Land and plantation agriculture);
- 9.2 Rehabilitation and maintenance of minor irrigation works;
- 9.3 Agricultural research, save and except institutions designated as national agriculture research institutions.

Paragraph 18 provides that

Land, that is to say rights in or over land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out Appendix II.

Appendix II however provides that State land vests in the Republic and may be disposed of in accordance with Article 33 (d) of the Constitution and written law governing the matter. The Appendix provides for consultation between the government and the Provincial Councils with respect to "State land required for the purposes of the Government in a Province". It is not clear how this consultation is to take place.

The Appendix provides that the alienation or disposition of State land within a province shall be by the President on the advice of the relevant Provincial Council. Furthermore, irrigation and land development projects which utilise water from rivers which flow through more than one province shall be the responsibility of the Central Government. Paragraph 2 of Appendix 2 suggests that the Central Government still retains control of allocation of lands arising out of these projects. Furthermore, the Reserved List declares that the regulations and development of river valleys to the extent to which the Central Government deems it expedient in the public interest shall be the responsibility of the Central Government.

Paragraph 3 provides for the creation of the National Land Commission which will include representatives of Provincial Councils. Paragraph 3:3 provided that,

National policy on land use will be based on technical aspects (not on political or communal aspects) and the Commission will lay down general norms in regard to the use of land, having regard to soil, climate, rainfall soil erosion, forest cover, environmental factors, economic viability etc.

Paragraph 3:4 requires that the Provincial Councils pay due regard to the policy formulated by the National Land Commission. It is submitted that the Government of Sri Lanka should also be requested to do so particularly since the Government of Sri Lanka still appears to retain considerable power and authority in this area.

Paragraph 26 of the Provincial Council list gives Provincial Councils the responsibility for,

"the regulation of mines and mineral development to the extent permitted by or under any law made by Parliament, within the Province".

The Reserved List (List II) provides however, that the Central Government shall be responsible for the

- a) Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable;
- b) Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Government of Sri Lanka is declared by Parliament by law to be expedient in the public interest.

It is submitted that these provisions suggest that responsibility for mines and minerals still vests in the Central Government.

Paragraph 8, List III, the Concurrent List deals with the establishment and promotion of agro-linked industries the establishment and maintenance of farms and supervision of private nurseries, soil, conservation and plant pests. Paragraph 17 deals with, inter alia, water storage and management, flood protection planning for water resources rural development. Paragraph 18 deals with Social Forestry and the protection of wild animals and birds. Paragraph 20 deals with various aspects of Animal Husbandry including the establishment of pastures Paragraph 33 deals with the protection of the environment.

Article 154 G (5)

- a) Parliament may make laws with respect to any matter set out in List II of the Ninth Schedule (hereinafter referred to as the Concurrent List) after such consultation with all the Provincial Councils as Parliament may consider appropriate in the circumstances of each case.
- b) Every Provincial Council, may, subject to the provisions of the Constitution, make statutes applicable to the province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case.

How does the consultation required by this Article take place? What are the institutional mechanisms whereby this consultation can be effected? In the **Transport Board Cases of 1990, S.C. No. 7/89, Mark Fernando J**, starting that consultation was mandatory, suggested that it was necessary to prevent a proliferation of cases before the Supreme Court.

In view of the subjects having an environmental impact contained in the Concurrent List, it is imperative that a consultation mechanism be established to overcome the confusion and ambiguity that seems to exist in the law. This is imperative not only in the interests of the protection of the environment, but also to facilitate the efforts to devolve power. It is difficult to embark upon reform of legislation dealing with environment - related issues until this uncertainty is resolved.

It is submitted that most of the laws relating to Agriculture and Land Use will have to be amended in the light of the 13th Amendment to the Constitution.

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J. E. R. P. A. V. S. S. V.